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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–110–AD; Amendment 39–11177; AD 99–08–05 R1]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9 and C–9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This amendment corrects information in an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9 and C–9 (military) series airplanes, that currently requires repetitive inspections to detect fatigue cracking of the fuselage frames and longerons 16R and 17R above the forward lower cargo door; repair, if necessary; and modification of the fuselage frames and longerons, if necessary, and follow-on repetitive inspections to detect fatigue cracking of the skin adjacent to the modification. That AD was prompted by numerous instances of fatigue cracking of the fuselage frames and longerons. The actions specified by that AD are intended to prevent fatigue cracking of the fuselage frames and longerons 16R and 17R, which could result in reduced structural integrity of the airplane. This amendment corrects an erroneous reference to a certain volume of the Supplemental Inspection Document.

DATES: Effective May 12, 1999.

The incorporation by reference of McDonnell Douglas Service Bulletin DC9–53–267, dated October 20, 1997, was approved previously by the Director of the Federal Register as of May 12, 1999 (64 FR 16805, April 7, 1999).

ADDRESSES: The service information referenced in this AD may be obtained from The Boeing Commercial Aircraft Group, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5324; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On March 30, 1999, the Federal Aviation Administration (FAA) issued AD 99–08–05, amendment 39–11110 (64 FR 16805, April 7, 1999), which applies to certain McDonnell Douglas Model DC–9 and C–9 (military) series airplanes. That AD requires repetitive inspections to detect fatigue cracking of the fuselage frames and longerons 16R and 17R above the forward lower cargo door; repair, if necessary; and modification of the fuselage frames and longerons, if necessary, and follow-on repetitive inspections to detect fatigue cracking of the skin adjacent to the modification. That AD was prompted by numerous instances of fatigue cracking of the fuselage frames and longerons. The actions required by that AD are intended to prevent fatigue cracking of the fuselage frames and longerons 16R and 17R, which could result in reduced structural integrity of the airplane.

AD 99–08–05 contains an error in paragraph (d) of the AD. That paragraph contains a reference to McDonnell Douglas Model DC–9 Supplemental Inspection Document, Report No. L26–008, Section 2 of Volume III–95, dated September 1995. The correct reference is McDonnell Douglas Model DC–9 Supplemental Inspection Document, Report No. L26–008, Section 2 of Volume I, Revision 5, dated July 1997.

Action is taken herein to correct the error in AD 99–08–05 and to correctly add the AD as an amendment to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The final rule is being reprinted in its entirety for the convenience of affected operators. The effective date remains May 12, 1999.

Since this action only corrects an error, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary.

List of Subjects in 14 CFR Part 39

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

Adoption of the Correction

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11110 (64 FR 16805, April 7, 1999), and by adding a new airworthiness directive (AD), amendment 39–11177, to read as follows:

99–08–05 R1 McDonnell Douglas: Amendment 39–11177. Docket 98–NM–110–AD. Revises AD 99–08–05, Amendment 39–11110.

Applicability: Model DC–9 and C–9 (military) series airplanes, as listed in McDonnell Douglas Service Bulletin DC9–53–267, dated October 20, 1997; certificated in any category.

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

been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the fuselage frames and longerons 16R and 17R, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Prior to the accumulation of 30,000 total landings, or within 3,000 landings after the effective date of this AD, whichever occurs later, perform a visual inspection to detect fatigue cracking of the fuselage frames and longerons 16R and 17R above the forward lower cargo door, in accordance with paragraph 3.B.1. of the Accomplishment Instructions of McDonnell Douglas Service Bulletin DC9–53–267, dated October 20, 1997.

(b) *Condition 1.* If no cracking is detected during the inspection required by paragraph (a) of this AD, accomplish the requirements of either paragraph (b)(1) or (b)(2) of this AD, in accordance with McDonnell Douglas Service Bulletin DC9–53–267, dated October 20, 1997.

(1) *Option 1.* Repeat the visual inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 19,000 landings. Or

(2) *Option 2.* Prior to further flight, modify the fuselage frames and longerons 16R and 17R. Prior to the accumulation of 19,000 landings after accomplishment of the modification, perform the visual inspection specified in paragraph 3.B.1.D. of the Accomplishment Instructions of the service bulletin to detect fatigue cracking of the skin adjacent to the modification.

(i) If no cracking is detected, repeat the visual inspection thereafter at intervals not to exceed 19,000 landings.

(ii) If any cracking is detected, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(c) *Condition 2.* If any cracking is detected during the inspection required by paragraph (a) of this AD, prior to further flight, repair the cracked area and modify the fuselage frames and longerons 16R and 17R; in accordance with McDonnell Douglas Service Bulletin DC9–53–267, dated October 20, 1997. Prior to the accumulation of 19,000 landings after accomplishment of the modification, perform the visual inspection specified in paragraph 3.B.1.D.(5) of the Accomplishment Instructions of the service bulletin to detect fatigue cracking of the skin adjacent to the modification, in accordance with the service bulletin.

(1) If no cracking is detected, repeat the visual inspection thereafter at intervals not to exceed 19,000 landings.

(2) If any cracking is detected, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles ACO.

(d) Accomplishment of the inspections required by this AD constitutes terminating action for the inspections of Principal Structural Element 53.09.055A (reference McDonnell Douglas Model DC–9 Supplemental Inspection Document, Report No. L26–008, Section 2 of Volume I, Revision 5, dated July 1997), as required by AD 96–13–03, amendment 39–9671.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(g) Except as provided by paragraphs (b)(2)(ii) and (c)(2) of this AD, the actions shall be done in accordance with McDonnell Douglas Service Bulletin DC9–53–267, dated October 20, 1997. The incorporation by reference of this document was approved previously by the Director of the Federal Register as of May 12, 1999 (64 FR 16805, April 7, 1999). Copies may be obtained from Boeing Commercial Aircraft Group, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) The effective date of this amendment remains May 12, 1999.

Issued in Renton, Washington, on May 14, 1999.

Donald E. Gonder,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–12829 Filed 6–2–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–51–AD; Amendment 39–11185; AD 99–11–14]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that requires detailed visual inspections to detect corrosion or chrome plating cracks on the fuse pins of the outboard support of the main landing gear (MLG) beam. This AD also would require either installation of the existing fuse pins and repetitive inspections; or installation of newer-type fuse pins, which constitutes terminating action for the repetitive inspections. This amendment is prompted by a report indicating that corrosion was found on a fuse pin in the outboard support of the MLG beam. The actions specified by this AD are intended to detect and correct such corrosion and cracking, which could result in the failure of a fuse pin and, consequently, lead to collapse of the MLG.

DATES: Effective July 8, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 8, 1999.

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

FOR FURTHER INFORMATION CONTACT: James G. Rehrl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2783; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing

Model 767 series airplanes was published in the **Federal Register** on July 15, 1998 (63 FR 38120). That action proposed to require detailed visual inspections to detect corrosion or chrome plating cracks on the fuse pins, load distribution plates, and bushings of the outboard support of the main landing gear (MLG) beam. That action also proposed to require either installation of the existing fuse pins and repetitive inspections; or installation of newer-type fuse pins, which would constitute terminating action for the repetitive inspections.

Comments

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

Support for the Proposal

Several commenters support the proposed rule.

Removal of References to Bushings and Load Distribution Plates

Several commenters request that all references to the bushings and load distribution plates specified in the proposal be removed. One commenter states that all references to these items have been removed in the latest revision (Revision 3) of Boeing Service Bulletin 767–57A0054. (Boeing Alert Service Bulletin 767–57A0054, Revision 2, dated April 18, 1996, was referenced in the proposal as the appropriate source of service information for accomplishment of the required actions.) Another commenter requests that the proposed inspection of the bushings and load distribution plates be removed, or if not removed, that accomplishment of the inspection, rework, and fabrication be performed in accordance with Component Maintenance Manual 57–54–23.

The commenters state that the unsafe condition in the proposed AD is related to cracking of the fuse pins and is not in any way related to discrepancies of the bushings and load distribution plates.

The FAA concurs with the commenters' requests. The FAA has determined that the structural integrity of the bushings and load distribution plates is indeed not an issue, and therefore all references to the bushings and load distribution plates have been removed from the final rule.

In addition, the final rule has been revised to include Boeing Service Bulletin 767–57A0054, Revision 3, dated October 30, 1997, as an additional source of service information. The FAA finds that this new revision is essentially the same as Revision 2 of the alert service bulletin. However, Revision 3 removes all references to the load distribution plates and bushings described in Revision 2 of the service bulletin.

Request To Allow Class 2 Chrome Plating Finish on Fuse Pins

One commenter requests that the proposed rule be changed to allow a chrome plating finish requirement of Class 2 or better on the 15–5PH CRES fuse pins. The commenter states that the Class 3 plating requirement for the fuse pins is excessive because Class 2 chrome plating is an effective shield against corrosion, and the substrate of the 15–5PH CRES fuse pins is less susceptible to corrosion than the older 4330M steel fuse pins. The commenter also indicates that the requirement for Class 3 chrome plating adds an unwarranted restriction at the next overhaul.

The FAA does not concur with the commenter's request to allow a chrome plating finish requirement of Class 2 or better on the 15–5PH CRES fuse pins, for several reasons:

1. As stated in the AD, the installation of the 15–5PH CRES fuse pins (with Class 3 chrome plating) is not required, but is an optional terminating action.

2. The new 15–5PH CRES fuse pins (with Class 3 chrome plating) were selected for the configuration because they are an improvement in that they are less susceptible to corrosion than the older 4330M steel fuse pins (with Class 2 chrome plating). Considering that Class 2 chrome plating has a history of disbonding from the steel substrate, the FAA finds it practical to select an improved process (i.e., Class 3 plating) for the new, more corrosion-resistant fuse pins.

3. The FAA reiterates that the pins called out in the service bulletin have already been manufactured with the improved Class 3 chrome plating. Compliance with this AD, and even with the optional terminating action (which is the portion of the AD that specifically calls for the installation of the 15–5PH CRES fuse pins), does not generate any excess burden on any operator by specifying that the new 15–5PH CRES fuse pins, as procured, have Class 3 chrome plating.

4. The FAA concludes that the commenter has misinterpreted that the AD requires Class 3 chrome plating be applied to the 4330M steel fuse pins, when, in fact, the AD does not. It requires that the existing 4330M steel fuse pins (with Class 2 plating) be repetitively inspected, or, as an optional terminating action, replaced with improved 15–5PH CRES fuse pins (with Class 3 plating).

5. Finally, in reference to the commenter's statement that Class 3 chrome plating adds an unwarranted restriction at the next overhaul, this AD does not require the existing 4330M steel fuse pins to be repaired with Class 3 plating at overhaul, nor does the AD describe any overhaul practices. Therefore, no change to the final rule is necessary in this regard.

Requests To Limit Applicability

One commenter requests that the applicability of the proposed rule be revised to include only those airplanes with fuse pins that have been identified by the manufacturer as substandard. The commenter states that the manufacturer has been able to connect inferior batches of fuse pins provided by certain suppliers to specific airplane line positions.

The FAA does not concur with the commenter's request. The manufacturer has not provided the FAA with any information that connects inferior batches of fuse pins to specific airplane line positions. Without such substantiating information, the FAA has no justification to revise the applicability of the final rule.

Another commenter requests that the applicability of the proposed rule be revised to exclude those airplanes on which 15–5PH CRES fuse pins have already been installed. The commenter states that the installation of the newer type 15–5PH CRES fuse pins addresses the unsafe condition and, therefore, airplanes with those pins installed are not affected by the proposed rule.

The FAA concurs with the commenter in that installation of the new fuse pins addresses the unsafe condition as stated in the final rule. Therefore, the applicability of the final rule has been revised accordingly.

Request To Revise Cost Impact Information

One commenter states that the service information contains more complete information than the preamble of the proposal and reflects a more accurate statement of the actual costs of the proposal. Although no specific change was requested by the commenter, the FAA infers that the commenter wants the cost impact section of the proposed rule to be revised to reflect the time required to gain access to the area and to return the airplane to normal service.

The FAA does not concur. The FAA acknowledges that the cost impact information, below, describes only the ''direct'' costs of the specific actions

required by this AD. The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur ''incidental'' costs in addition to the ''direct'' costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate. Therefore, attempting to estimate such costs would be futile. No change to the final rule is necessary in this regard.

Conclusion

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

Cost Impact

There are approximately 609 Boeing Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 151 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $36,240, or $240 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–11–14 Boeing: Amendment 39–11185. Docket 97–NM–51–AD.

Applicability: Model 767 series airplanes, line numbers 1 through 609 inclusive; certificated in any category; having 4330M steel fuse pins installed in the outboard support of the main landing gear (MLG) beam.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion and cracking of the fuse pins in the outboard support of the MLG beam, which could result in the failure of a fuse pin and, consequently, lead to collapse of the MLG, accomplish the following:

Detailed Visual Inspection

(a) Within 4 years of service since the MLG was new, or within 18 months after the effective date of this AD, whichever occurs later, perform detailed visual inspections of the fuse pins of the MLG outboard support beam to detect corrosion or chrome plating cracks on the fuse pin, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–57A0054, Revision 2, dated April 18, 1996, or Boeing Service Bulletin 767–57A0054, Revision 3, dated October 30, 1997.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation or assembly to detect damage, failure or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required.''

Corrective Actions

(b) If any corrosion or plating crack of a fuse pin is found during any inspection required by paragraph (a) of this AD, prior to further flight, accomplish either paragraph (b)(1) or (b)(2) of this AD.

(1) Install a new or serviceable 4330M steel fuse pin in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–57A0054, Revision 2, dated April 18, 1996, or Boeing Service Bulletin 767–57A0054, Revision 3, dated October 30, 1997. Repeat the detailed visual inspections required by paragraph (a) of this AD thereafter at intervals not to exceed 48 months. Or

(2) Install a newer-type 15–5PH CRES fuse pin in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–57A0054, Revision 2, dated April 18, 1996, or Boeing Service Bulletin 767–57A0054, Revision 3, dated October 30, 1997. Accomplishment of this installation constitutes terminating action for the repetitive inspection requirements of paragraphs (a), (b)(1), and (c)(1) of this AD.

(c) If no corrosion or plating crack is found on the fuse pins, prior to further flight, accomplish the requirements of either paragraph (c)(1) or (c)(2) of this AD in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–57A0054, Revision 2, dated April 18, 1998, or Boeing Service Bulletin 767–57A0054, Revision 3, dated October 30, 1997.

(1) Install the existing 4330M steel fuse pins in accordance with the Accomplishment Instructions of the service bulletin. Repeat the detailed visual inspections required by paragraph (a) of this AD thereafter at intervals not to exceed 48 months. Or

(2) Install newer-type 15–5PH CRES fuse pins in accordance with the Accomplishment Instructions of the service bulletin. Accomplishment of this installation constitutes terminating action for the repetitive inspection requirements of paragraphs (a), (b)(1), and (c)(1) of this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 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.

Incorporation by Reference

(f) The actions shall be done in accordance with Boeing Alert Service Bulletin 767–57A0054, Revision 2, dated April 18, 1996; or Boeing Service Bulletin 767–57A0054, Revision 3, dated October 30, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on July 8, 1999.

Issued in Renton, Washington, on May 21, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–13878 Filed 6–2–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–21–AD; Amendment 39–11184; AD 99–11–13]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Model 402C Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Cessna Aircraft Company (Cessna) Model 402C airplanes. This AD requires inspecting the forward, aft, and auxiliary wing spars for cracks; repairing any cracks found; and reporting the results of the inspection to the Federal Aviation Administration (FAA). This AD is the result of an accident of one of the affected airplanes where the right-hand wing failed just inboard of the nacelle at Wing Station (WS) 87. Investigation of this accident revealed fatigue cracking of the forward main spar that initiated at the edge of the front spar forward lower spar cap. The actions specified by this AD are intended to detect and correct any cracks in the forward, aft, and auxiliary wing spars, which could result in reduced or loss of control of the airplane.

DATES: Effective June 21, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 21, 1999.

Comments for inclusion in the Rules Docket must be received on or before July 23, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–21–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from the Cessna Aircraft Company, P. O. Box 7706, Wichita, Kansas 67277; telephone: (316) 941–7550, facsimile: (316) 942–9008. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–21–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Eual Conditt, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209, telephone: (316) 946–4128; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA has received a report of an accident on a Cessna Model 402C airplane where the right-hand wing failed just inboard of the nacelle at Wing Station (WS) 87 during a normal descent. Investigation of this accident revealed fatigue cracking of the forward main spar that initiated at the edge of the front spar forward lower spar cap.

The airplane involved in the above-referenced accident had accumulated over 20,000 hours time-in-service (TIS). Analysis shows that the fatigue cracks could propagate after 10,000 hours TIS. Information available to the FAA shows that a large percentage of the Cessna Model 402C airplane fleet has already accumulated 10,000 hours TIS.

Relevant Service Information

Cessna has issued Service Bulletin MEB99–3, dated May 6, 1999, which includes procedures for conducting an internal and external inspection of the forward, aft, and auxiliary wing spars for cracks.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, including the relevant service information, the FAA has determined that:

—In order to detect cracking on Cessna Model 402C airplanes, an external and internal inspection of the forward, aft, and auxiliary wing spars for cracks should be accomplished upon accumulating 10,000 hours total TIS on the airplane or within the next 25 hours TIS for those airplanes having already accumulated 10,000 hours TIS; and

—AD action should be taken to assure that these inspections are accomplished.

Explanation of the Provisions of the AD

Since an unsafe condition has been identified that is likely to exist or develop in other Cessna Model 402C airplanes of the same type design, this AD requires inspecting the forward, aft, and auxiliary wing spars for cracks; repairing any cracks found; and reporting the results of the inspection to the FAA.

Accomplishment of the inspections as specified in this AD is required in accordance with Cessna Service Bulletin MEB99–3, dated May 6, 1999. The repair, if necessary, is required in accordance with an FAA-approved repair scheme.

Possible Follow-Up AD Action

The FAA is requiring a reporting requirement of the inspection results in order to analyze the situation and determine whether repetitive inspections of the wing spars are necessary. The FAA will review all information received and will then determine whether additional AD action is necessary.

Determination of the Effective Date of the AD

Since a situation (possible loss of control of the airplane caused by a cracked wing spar) exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for public prior comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–CE–21–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

99–11–13 Cessna Aircraft Company: Amendment 39–11184; Docket No. 99-CE–21–AD.

Applicability: Model 402C airplanes, serial numbers 689; 402C0001 through 402C0125; 402C0201 through 402C0355; 402C0401 through 402C0528; 402C0601 through 402C0653; and 402C0801 through 402C1020, certificated in any category.

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

Compliance: Required as indicated in the body of this AD, unless already accomplished.

Note 2: The compliance times specified in Cessna Service Bulletin MEB99–3, dated May 6, 1999, are different than those required by this AD. The compliance times of this AD take precedence over those specified in the service bulletin.

To detect and correct any cracks in the forward, aft, and auxiliary wing spars, which could result in reduced or loss of control of the airplane, accomplish the following:

(a) Upon accumulating 10,000 hours total time-in-service (TIS) on the airplane or within the next 25 hours TIS after the effective date of this AD, whichever occurs later, accomplish the external and internal inspection of the forward, aft, and auxiliary wing spars for cracks, in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Cessna Service Bulletin MEB99–3, dated May 6, 1999.

(b) If any crack(s) is/are found on any forward, aft, or auxiliary wing spar during the inspections required by paragraph (a) of this AD, prior to further flight, accomplish the following:

(1) Obtain an FAA-approved repair scheme from the Cessna Aircraft Company, P. O. Box 7706, Wichita, Kansas 67277; telephone: (316) 941–7550, facsimile: (316) 942–9008; and

(2) Incorporate this repair scheme.

(c) If any crack(s) is/are found during the inspections required by paragraph (a) of this AD, submit a report of inspection findings to the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; facsimile: (316) 946–4407; at the applicable time specified in paragraph (c)(1) or (c)(2) of this AD. The report must include the results of the findings, a description of any cracking found, a description of any previous wing repairs or modifications, the airplane serial number, and the total number of hours TIS on the airplane. The ''Lower Wing Spars and Skin Inspection Report'' included as page 6 of Cessna Service Bulletin MEB99–3, dated May 6, 1999, may be utilized for this reporting requirement. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) *For airplanes on which the inspections are accomplished after the effective date of this AD:* Submit the report within 10 days after performing the inspection required by paragraph (a) of this AD.

(2) *For airplanes on which the inspections have already been accomplished prior to the effective date of this AD:* Submit the report within 10 days after the effective date of this AD, unless already accomplished.

(d) Special flight permits may be issued in accordance with §§ 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.

(e) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

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

(f) The inspections required by this AD shall be done in accordance with Cessna Service Bulletin MEB99-3, dated May 6, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Cessna Aircraft Company, P. O. Box 7706, Wichita, Kansas 67277. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(g) This amendment becomes effective on June 21, 1999.

Issued in Kansas City, Missouri, on May 21, 1999.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate.

[FR Doc. 99–13875 Filed 6–2–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–223–AD; Amendment 39–11186; AD 99–11–15]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires a one-time detailed visual inspection to detect improperly installed or frayed aileron cables, and a one-time detailed visual inspection to detect improper identification or location of the cable markers, and corrective actions, if necessary. This amendment is prompted by a report that an aileron cable failed, due to improper installation onto the wrong groove of an aileron cable drum. The actions specified by this AD are intended to detect and correct an improperly installed aileron cable; such installation could lead to the failure of the aileron cable, and consequent reduced lateral control capability of the airplane.

DATES: Effective July 8, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 8, 1999.

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

FOR FURTHER INFORMATION CONTACT: Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes was published in the **Federal Register** on September 8, 1998 (63 FR 47447). That action proposed to require a one-time detailed visual inspection to detect improperly installed or frayed aileron cables, and a one-time detailed visual inspection to detect improper identification or location of the cable markers, and corrective actions, if necessary.

Comments

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

Support for the Proposal

Two commenters support the proposed rule, and two commenters offered no objection to the proposed rule.

Request To Reference Revised Service Information

One commenter requests that the FAA revise the proposed rule to add references to Revision 1 of Boeing Service Bulletin 747–27–2367, dated December 17, 1998, as an appropriate source of service information for accomplishment of the actions specified by the proposal. The proposed AD referenced only the original issue of the service bulletin, dated June 25, 1998.

The FAA concurs with the commenter's request. The FAA has reviewed and approved Boeing Service Bulletin 747–27–2367, Revision 1. The instructions contained in Revision 1 of the service bulletin are substantially similar to those in the original issue of the service bulletin. Therefore, paragraph (a) of this final rule has been revised to state that the inspections are to be accomplished in accordance with either the original issue or Revision 1 of the service bulletin. However, among other things, Revision 1 removes airplanes from the effectivity listing of the original service bulletin, and revises certain illustrations to clarify the accomplishment instructions. Therefore, the applicability statement of this final rule has been revised to make this AD applicable to, ''Model 747 series airplanes, as listed in Boeing Service Bulletin 747–27–2367, Revision 1. . . .'' In addition, the cost impact section has been revised in this final rule to reflect the reduction in the number of affected airplanes.

Request To Increase Compliance Threshold

One commenter requests that the compliance threshold for accomplishment of the one-time detailed visual inspections be increased from 18 months to 36 months. The commenter states that the inspections must be accomplished during a heavy maintenance check, and that a similar maintenance task is scheduled for every 2C-check on Model 747 series airplanes. The commenter further states that increasing the compliance threshold would allow operators to accomplish the inspections specified in this AD concurrently with that similar task. The commenter justifies its request for an increased inspection threshold by stating that a failure effects assessment indicates that, in the event of failure of two cables about a cable drum, the handling qualities of Model 747 series airplanes would be ''adequate.''

The FAA does not concur with the commenter's request to increase the compliance threshold. Service history has indicated that many aileron cable markers are located incorrectly, which may lead to a greater exposure to failures of the aileron cables and possible mishandling of the airplane. The FAA has determined that a compliance time of 18 months is adequate to allow operators to

accomplish the actions required by this AD, while not adversely affecting the safety of the transport airplane fleet. In support of this determination, the FAA has received information indicating that certain operators presently perform a detailed inspection of the aileron cables during every C-check. No change to the final rule is necessary in this regard.

Request To Revise Compliance Time for Replacement of Discrepant Marker

One commenter requests that the FAA revise the proposed compliance time for the replacement of an aileron cable marker that is found to be improperly identified or located. Paragraph (a)(4) of the proposed AD states that any aileron cable marker that is found to be improperly identified or located must be replaced with a new marker prior to further flight. The commenter states that an improperly installed aileron cable marker does not affect the functionality of the aileron control system, and requests that the proposed rule be revised to require replacement of a discrepant cable marker, ''at the earliest maintenance opportunity,'' rather than, ''prior to further flight.'' The operator also points out that if an operator needs to replace or re-route an aileron cable prior to replacement of an improperly installed marker, the cable can be replaced or rerouted in accordance with the Airplane Maintenance Manual (AMM) instead of the aileron cable marker.

The FAA does not concur with the commenter's request. The FAA finds that revising the compliance time from ''prior to further flight'' to ''at the earliest maintenance opportunity'' would permit each operator to determine when a discrepant aileron cable marker is replaced. In light of the identified unsafe condition, the FAA has determined that allowing this degree of operator discretion is not appropriate. However, under the provisions of paragraph (c) of the final rule, operators may request approval of an alternative method of compliance that would allow extension of the compliance time for replacement of a discrepant marker. Therefore, no change to the final rule is necessary in this regard.

With regard to the use of the procedures specified in the AMM, rather than the aileron cable marker, to replace or reroute an aileron cable: As pointed out in the ''Discussion'' section of the proposal, the FAA has received many reports of misrouted aileron cables. These incidents of misrouted aileron cables have occurred in spite of the fact that the AMM specifies procedures for routing the aileron cables that do not rely on the aileron cable markers. For this reason, the FAA finds it likely that the misrouted aileron cables are due to improperly identified or located cable markers. No change to the final rule is necessary in this regard.

Request To Revise the Compliance Time for Reporting Adverse Results

Two commenters request that the FAA increase the proposed compliance time for reporting adverse inspection results from 10 days after the inspection to 30 days after the inspection. One of the commenters states that a 30-day compliance time would allow the paperwork to be handled according to normal, rather than special, procedures. The commenter states that such special handling procedures as would be necessary with a 10-day compliance time often result in lost or incomplete information. The commenter asserts that a 30-day compliance time would allow an affected operator to submit ''a concise and accurate report to the FAA.''

The FAA concurs with the commenters' request to increase the compliance time for reporting adverse inspection results. The FAA finds that an increase in the compliance time from 10 days after accomplishment of the inspection to 30 days after accomplishment of the inspection would not have an adverse effect on the safety of the transport airplane fleet. Paragraph (b) of this final rule has been revised accordingly.

Explanation of Change Made to the Proposal

The FAA has added a **''Note 2''** to the final rule to clarify the definition of a detailed visual inspection.

Conclusion

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

Cost Impact

There are approximately 1,023 Boeing Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 224 airplanes of U.S. registry will be affected by this AD.

It will take approximately 9 work hours per airplane to accomplish the required detailed visual inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $120,960, or $540 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–11–15 Boeing: Amendment 39–11186. Docket 98–NM–223–AD.

Applicability: Model 747 series airplanes, as listed in Boeing Service Bulletin 747–27–

2367, Revision 1, dated December 17, 1998; 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 detect and correct an improperly installed aileron cable, which could lead to the failure of the aileron cable, and consequent reduced lateral control capability of the airplane, accomplish the following:

One-Time Inspections and Corrective Actions

(a) Within 18 months after the effective date of this AD, perform a one-time detailed visual inspection to detect improper installation or fraying of the aileron cables on both wings. In addition, perform a one-time detailed visual inspection of the aileron cable markers on both wings to detect improper identification or location. Perform both inspections in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–27–2367, dated June 25, 1998, or Revision 1, dated December 17, 1998.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(1) If no improperly installed or frayed aileron cable is found, and if no aileron cable marker is improperly identified or located, no further action is required by this AD.

(2) If any aileron cable is found to be improperly installed (but not frayed), prior to further flight, reroute the discrepant aileron cable in accordance with the Accomplishment Instructions of the service bulletin.

(3) If any aileron cable is found to be frayed, prior to further flight, replace the discrepant aileron cable with a new aileron cable in accordance with the Accomplishment Instructions of the service bulletin.

(4) If any aileron cable marker is found to be improperly identified or located, prior to further flight, replace the discrepant aileron cable marker with a new aileron cable marker in accordance with the Accomplishment Instructions of the service bulletin.

Reporting Requirement

(b) Within 30 days after accomplishing the detailed visual inspections required by paragraph (a) of this AD, submit a report of the inspection results (adverse findings only) to the Manager, Boeing Certificate Management Office, FAA, Transport Airplane Directorate, 2500 East Valley Road, Suite C2, Renton, Washington 98055; fax (425) 227–1159. Required information for each report must include the following: description of the adverse finding, airplane serial number, and total flight cycles and flight hours accumulated at the time of the inspection. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

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 3: 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 §§ 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.

Incorporation by Reference

(e) The actions shall be done in accordance with Boeing Service Bulletin 747–27–2367, dated June 25, 1998; or Boeing Service Bulletin 747–27–2367, Revision 1, dated December 17, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on July 8, 1999.

Issued in Renton, Washington, on May 21, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–13874 Filed 6–2–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AWP–35]

RIN 2120–AA66

Amendment of VOR Federal Airways; Kahului, HI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule

SUMMARY: This action realigns seven Hawaiian Very High Frequency Omnidirectional Range (VOR) Federal airways due to the relocation of the Maui, HI, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC). The FAA is taking this action to enhance safety and improve the management of air traffic operations in the vicinity of Kahului, HI.

EFFECTIVE DATE: 0901 UTC, September 9, 1999.

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

SUPPLEMENTARY INFORMATION:

Background

On March 16, 1998, the FAA proposed to amend 14 CFR part 71 (part 71) to modify the legal descriptions of seven VOR Federal airways, V–1, V–5, V–6, V–11, V–15, V–17, and V–22, located in Kahului, HI, due to the relocation of the Maui, HI, VORTAC (63 FR 12711). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. Except for editorial changes, this amendment is the same as that proposed in the notice.

The Rule

This action amends part 71 by modifying the legal descriptions of seven VOR Federal airways, V–1, V–5, V–6, V–11, V–15, V–17, and V–22, due to the relocation of the Maui, HI, VORTAC. The FAA is taking this action to enhance safety and improve the management of air traffic operations in the vicinity of Kahului, HI.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally

current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Hawaiian VOR Federal airways are published in paragraph 6010(c) of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Hawaiian VOR Federal airways listed in this document will be published subsequently in the Order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6010(c)—Hawaiian VOR Federal Airways

* * * * *

V–1 [Revised]

From Kona, HI, via INT Kona 323° and Maui, HI, 180° radials; INT Maui 180° and Upolu Point, HI, 305° radials; INT Maui 197° and Upolu Point 305° radials; to Maui.

* * * * *

V–5 [Revised]

From Kona, HI, via INT Kona 338° and Maui, HI, 180° radials; to INT Maui 180° and Upolu Point, HI, 305° radials.

V–6 [Revised]

From INT Molokai, HI, 067° and Maui, HI, 329° radials, to Maui.

* * * * *

V–11 [Revised]

From INT Kona, HI, 323° and Upolu Point, HI, 211° radials; via Upolu Point; INT Upolu Point 349° and Maui, HI, 081° radials; to Maui.

* * * * *

V–15 [Revised]

From INT South Kauai, HI, 288° radial and long. 162°37′11″ W., via South Kauai; Lihue, HI; INT Lihue 121° and Honolulu, HI, 269° radials; Honolulu; Koko Head, HI; Molokai, HI, Maui, HI, INT Maui 096° and Hilo, HI, 336(radials; Hilo to INT Hilo 099° radial and long. 151°53′00″ W.

* * * * *

V–17 [Revised]

From INT Lanai, HI, 106° and Maui, HI, 197° radials; Maui. From INT Koko Head, HI, 071° and Maui 347° radials; to INT Maui 347° and Lihue, HI, 065° radials.

* * * * *

V–22 [Revised]

From Molokai, HI, via INT Molokai 082° and Maui, HI, 329° radials; Maui; INT Maui 096° and Hilo, HI, 321° radials; Hilo; to INT Hilo 078° radial and long. 152°14′00″ W.

* * * * *

Issued in Washington, DC, on May 27, 1999.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 99–14078 Filed 6–2–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 401, 411, 413, 415 and 417

[Docket No. 28851; Amdt. Nos. 401–01, 411–01, 413–01, 415–01 and 417–01]

RIN 2120–AF99

Commercial Space Transportation Licensing Regulations; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule published in the **Federal Register** of April 21, 1999 (64 FR 19586). That document amends its licensing regulations in order to clarify its license application process generally, and for launches from federal launch ranges, specifically. The regulations are intended to provide applicants and licensees greater specificity and clarity regarding the scope of a license, and to codify and amend licensing requirements and criteria.

EFFECTIVE DATE: June 21, 1999. An application pending at the time of the effective date must conform to any new requirements of this rulemaking as of the effective date. All license terms and conditions, and all safety requirements of this rulemaking also apply as of the effective date.

FOR FURTHER INFORMATION CONTACT: J. Randall Repcheck, (202) 267–8379.

Correction

In final rule FR Doc. 99–9639, published in the **Federal Register** of April 21, 1999 (64 FR 19586), make the following correction:

On page 19586, in column 1, in the heading, correct ''[Docket No. 28851; Amdt. Nos. 401–01, 411–01, 413–01, 415–01 and 417–01'' to read ''[Docket No. 28851; Amdt Nos. 401–01, 411–01, 413–03, 415–03 and 417]''.

Issued in Washington, DC, on May 25, 1999.

Gary A. Michel,

Acting Assistant Chief Counsel, Office of Chief Counsel.

[FR Doc. 99–13820 Filed 6–2–99; 8:45 am]

BILLING CODE 4910–13–M

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Regulations No. 4]

RIN 0960–AF02

Federal Old-Age, Survivors and Disability Insurance; Determining Disability and Blindness; Extension of Expiration Dates for Several Body System Listings

AGENCY: Social Security Administration (SSA).

ACTION: Final rule.

SUMMARY: SSA adjudicates claims at the third step of its sequential evaluation process for evaluating disability using the Listing of Impairments (the Listings) under the Social Security and supplemental security income (SSI) programs. This final rule extends the dates on which several body system listings will no longer be effective. We have made no revisions to the medical criteria in these listings; they remain the same as they now appear in the Code of Federal Regulations. These extensions will ensure that we continue to have medical evaluation criteria in these listings to adjudicate claims for

disability based on impairments in these body systems at step three of our sequential evaluation process.

EFFECTIVE DATE: This final regulation is effective June 3, 1999.

FOR FURTHER INFORMATION CONTACT: Deborah Barnes, Social Insurance Specialist, Office of Disability, Social Security Administration, 3–A–9 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–4171 or TTY (410) 966–5609. For information on eligibility, claiming benefits, or coverage of earnings, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778.

SUPPLEMENTARY INFORMATION: We use the Listings in appendix 1 to subpart P of part 404 at the third step of the sequential evaluation process to evaluate claims filed by adults and individuals under age 18 for benefits based on disability under the Social Security and SSI programs. The Listings are divided into parts A and B. We use the criteria in part A to evaluate the impairments of adults. We use the criteria in part B first to evaluate impairments of individuals under age 18. If those criteria do not apply, then the medical criteria in part A will be used.

When we published revised listings in 1985 and subsequently, we indicated that medical advances in disability evaluation and treatment and program experience would require that they be periodically reviewed and updated. Accordingly, we established dates ranging from 3 to 8 years on which the various body system listings would no longer be effective unless extended by the Secretary of Health and Human Services or revised and promulgated again. Effective March 31, 1995, the authority to issue regulations was transferred to the Commissioner of Social Security by section 102 of Pub. L. 103–296, the Social Security Independence and Program Improvements Act of 1994.

In this final rule, we are extending the dates on which several body system listings will no longer be effective to July 2, 2001. These body systems are:

Growth Impairment (100.00)
Musculoskeletal System (1.00 and 101.00)
Special Senses and Speech (2.00 and 102.00)
Hemic and Lymphatic System (7.00 and 107.00)
Skin (8.00)
Endocrine System and Obesity (9.00) and Endocrine System (109.00)
Multiple Body Systems (110.00)
Neurological (11.00 and 111.00)
Mental Disorders (12.00 and 112.00)
Neoplastic Diseases, Malignant (13.00 and 113.00)
Immune System (14.00 and 114.00)

We last extended the dates on which these body system listings would no longer be effective in final rules published as follows:

June 5, 1997 (62 FR 30746): Musculoskeletal System; Hemic and Lymphatic System; Skin; Endocrine System; Mental Disorders; and Neoplastic Diseases, Malignant.

June 4, 1998 (63 FR 30410): Growth Impairment; Special Senses and Speech; Multiple Body Systems; Neurological; and Immune System.

We believe that the requirements in these listings are still valid for our program purposes. Specifically, if we find that an individual has an impairment that meets or is medically equivalent in severity to an impairment in the Listings or functionally equivalent to the Listings in SSI claims based on disability filed by individuals under age 18 and also meets the statutory duration requirement, we will find that the individual is disabled at the third step of the sequential evaluation process. We are extending these dates because we do not expect to develop revised listings criteria for these body systems by the expiration dates we are revising in this final rule. However, we are reviewing the listings and we plan to publish proposed and final rules over the course of the next two years.

Regulatory Procedures

Justification for Final Rule

Pursuant to section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5), as amended by section 102 of Public Law 103–296, SSA follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the notice and public comment procedures in this case. Good cause exists because this regulation only extends the date on which these body system listings will no longer be effective. It makes no substantive changes to those listings. The current regulations expressly provide that listings may be extended, as well as revised and promulgated again. Therefore, opportunity for prior comment is unnecessary, and we are issuing this regulation as a final rule.

In addition, we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule provided by 5 U.S.C. 553(d). As explained above, we are not making any substantive changes in these body system listings. However, without an extension of the expiration dates for these listings, we will lack regulatory guidelines for assessing impairments in these body systems at the third step of the sequential evaluation process after the current expiration dates of these listings. In order to ensure that we continue to have regulatory criteria for assessing impairments under these listings, we find that it is in the public interest to make this rule effective upon publication.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that this final rule does not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, it was not subject to OMB review. We have also determined that this final rule meets the plain language requirement of Executive Order 12866 and the President's memorandum of June 1, 1998.

Regulatory Flexibility Act

We certify that this final regulation will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

This final regulation imposes no reporting/recordkeeping requirements necessitating clearance by OMB.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, reporting and recordkeeping requirements, Social Security.

Dated: May 27, 1999.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons set forth in the preamble, part 404, subpart P, chapter III of title 20 of the Code of Federal Regulations is amended as set forth below.

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

Subpart P—[Amended]

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

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

Appendix 1 to Subpart P of Part 404 [Amended]

2. Appendix 1 to subpart P of part 404 is amended by revising items 1, 2, 3, 8, 9, 10, 11, 12, 13, 14, and 15 of the introductory text before Part A to read as follows:

Appendix 1 to Subpart P—Listing of Impairments

* * * * *

1. Growth Impairment (100.00): July 2, 2001.
2. Musculoskeletal System (1.00 and 101.00): July 2, 2001.
3. Special Senses and Speech (2.00 and 102.00): July 2, 2001.

* * * * *

8. Hemic and Lymphatic System (7.00 and 107.00): July 2, 2001.
9. Skin (8.00): July 2, 2001.
10. Endocrine System and Obesity (9.00) and Endocrine System (109.00): July 2, 2001.
11. Multiple Body Systems (110.00): July 2, 2001.
12. Neurological (11.00 and 111.00): July 2, 2001.
13. Mental Disorders (12.00 and 112.00): July 2, 2001.
14. Neoplastic Diseases, Malignant (13.00 and 113.00): July 2, 2001.
15. Immune System (14.00 and 114.00): July 2, 2001.

* * * * *

[FR Doc. 99–14081 Filed 6–2–99; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8821]

RIN 1545–AN54

Group-Term Insurance; Uniform Premiums

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations revising the uniform premium table used to calculate the cost of group-term life insurance coverage provided to an employee by an employer. These regulations provide guidance to employers who provide group-term life insurance coverage to their employees that is includible in the gross income of the employees.

DATES: *Effective Date:* These regulations are effective July 1, 1999.

Applicability Date: For the applicability of these regulations to group-term life insurance coverage, see §1.79–3(e).

FOR FURTHER INFORMATION CONTACT: Betty J. Clary, (202) 622–6070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations under section 79 of the Internal Revenue Code. These regulations revise the uniform premiums used to calculate the cost of group-term life insurance provided to employees. The revised uniform premiums are effective generally on July 1, 1999. However, employers have until the last pay period of 1999 to make any needed adjustments of amounts withheld for purposes of the FICA. Further, an employer may continue using only 10 age-brackets for making its calculations until January 1, 2000. A special effective date applies to a policy of life insurance issued under a plan in existence on June 30, 1999, if the policy would not be treated as carried directly or indirectly by an employer under § 1.79–0 of the Income Tax Regulations using the section 79 uniform premium table in effect on June 30, 1999. If this is the case, the employer may continue using such table for determining if the policy is carried directly or indirectly by an employer until January 1, 2003.

Section 79 generally permits an employee to exclude from gross income the cost of $50,000 of group-term life insurance carried directly or indirectly by an employer. The remaining cost of the group-term life insurance is included in the employee's gross income to the extent it exceeds the amount, if any, paid by the employee for the coverage. Income imputed under section 79 is not subject to Federal income tax withholding. However, it is subject to FICA tax and, for active employees, an employer is required to withhold the FICA tax at least once a year. Also, the amount of the income imputed under section 79 is reported on an employee's Form W–2.

Section 79 provides for the cost of the group-term life insurance to be determined on the basis of five-year age brackets prescribed by regulations. Those costs are set forth in the regulations in Table I entitled ''Uniform Premiums for $1,000 of Group-term Life Insurance Protection.'' § 1.79–3(d)(2). The group-term life insurance costs are calculated on a calendar month basis. § 1.79–3 (a) through (c).

Table I was initially published on July 6, 1966 (31 FR 9199), and was revised on December 6, 1983 (48 FR 54595). In a notice of proposed rulemaking (REG 209103-89) published in the **Federal Register** (64 FR 2164) on January 13, 1999, the IRS and Treasury proposed revising the Table I rates, effective July 1, 1999. The uniform premiums under the proposed table were lower in all age groups than those under the then-current section 79 regulations.[1] The proposed table also added a new age bracket to the table for ages under 25. A special effective date was proposed solely for purposes of determining whether a policy is carried directly or indirectly by the employer.

Explanation of Provisions

Uniform Premium Table

The IRS received 26 written comments concerning the proposed regulations. No commentator suggested changes to the proposed uniform premium table. The final regulations reflect the uniform premium table that was set forth in the proposed regulations.

General Effective Date

Many of the comments received by the IRS discussed the proposed effective date for the uniform premium rates. Some commentators agreed with the proposed effective date of July 1, 1999. Many of the commentators asked that the effective date be made retroactive to January 1, 1999. A few of the commentators requested that it be postponed, generally until January 1, 2000. Some commentators suggested that each employer should be allowed to decide the effective date for its employees, within a limited period of time set by the IRS. Some commentators requested that the effective date of the

[1] The revised uniform premiums are based on mortality experience for individuals covered by group-term life insurance during the 1985–1989 period, as reflected in a Society of Actuaries report. The mortality rates have been adjusted for improvements in mortality from 1988 (the weighted midpoint for the data used in the 1985–89 study) through 2000, based on the same rates of mortality improvement that were adopted by the Society of Actuaries Group Annuity Valuation Table Task Force for the period 1988–1994. Separate mortality rates have been derived for males and females, and the uniform premium table reflects a 50/50 blend of the male and female mortality rates. The resulting mortality projections have been adjusted to reflect a 10 percent load factor.

revised Table I be the first payroll period beginning on or after July 1, 1999.

Those advocating a January 1, 1999 effective date expressed the view that employees should get the benefit of the lower Table I rates for the entire year. In their opinion, additional administrative costs, if any, for implementing revised rates retroactively, rather than July 1, 1999, would be minimal. Some commentators observed that the use of a January 1 effective date would permit the use of a single set of Table I rates for the entire year, rather than a bifurcated rate for 1999. However, there was no consensus as to whether this factor suggests using an effective date of January 1, 1999 or (as discussed below) January 1, 2000.

Some commentators suggested a January 1, 2000 effective date on account of resource constraints resulting from year 2000 compliance. One of the commentators also observed that many payroll systems are now ''hard coded'' for making group-term calculations using only 10 age brackets, and that the additional age bracket (for ages under 25) in the revised Table I would make it more difficult to modify those payroll systems by July 1, 1999. In the public hearing that was held on the proposed regulations on May 6, 1999, the sole speaker reiterated its written comment in which it requested that the effective date be postponed, generally until January 1, 2000, and indicated that a change in the proposed regulations to not mandate use of the ''Under 25'' age bracket would significantly reduce the administrative burden of a July 1, 1999 effective date.

The IRS and Treasury continue to believe that an effective date of July 1, 1999 provides the best way to balance the ability of employees to obtain the tax benefits of the lower Table I rates with the concerns expressed by some commentators about modifying payroll systems. As stated previously, income imputed under section 79 is not subject to Federal income tax withholding. Further, while it must be reported on Form W–2 and it is subject to FICA tax withholding, changes to payroll systems are not required to be effectuated by the July 1, 1999 effective date.

Specifically, Notice 88–82 (1988–2 C.B. 398), ''Reporting FICA Taxes on Group-Term Life Insurance,'' explains that an employer may treat the imputed income amounts as paid either by the pay period, by the quarter, or on any other basis so long as the payments are treated as paid at least as often as once a year. The employer need not inform the IRS of a formal choice of payment dates or the dates chosen. Furthermore, the same choice need not be made for all employees. The employer may change methods at any time, so long as all imputed income amounts includible in a calendar year are treated as paid by December 31 of the calendar year. Notice 88–82, therefore, permits those employers currently withholding the FICA taxes on a pay period basis to either (1) change methods to treat the Table I amounts includible in income after July 1, 1999 as paid on December 31, 1999, or (2) continue to withhold using the old Table I rates, so long as adjustments for the post-July 1, 1999 FICA withholding amounts are made by the last pay period for 1999.

Accordingly, the regulations provide that the revised Table I rates are effective, generally, on July 1, 1999. However, in order to further minimize the administrative burden of a July 1, 1999 effective date, the regulations allow employers to continue using 10 age brackets until January 1, 2000, thereby eliminating the need for ''hard coded'' systems to be modified during 1999 to include the ''Under 25'' age bracket.

Special Effective Date

Several comments were received on the topic of the effective date for purposes of determining whether, for purposes of section 79, a policy is carried directly or indirectly by the employer. A policy is considered carried directly or indirectly by the employer if (a) the employer pays any part of the life insurance, or (b) the employer arranges for payment of the cost of the life insurance by its employees and charges at least one employee less than the cost of his or her insurance (as determined under Table I) and at least one other employee more than his or her insurance (as determined under Table I). § 1.79–0.

The IRS and Treasury recognize that the premiums charged to employees under some employee-pay-all plans may involve premiums charged to employees that are all at or below the uniform premium rates prior to the revision of Table I. Because the revised Table I rates are lower than the rates under the prior table, it is likely that the premiums charged under some of those policies will now straddle the new rates. As a result, the life insurance provided under those policies will become subject to section 79. The notice of proposed rulemaking proposed a special effective date rule to apply to any policy of life insurance issued under a plan in existence before the general July 1, 1999 effective date. Under the special rule, if a policy would not be treated as carried directly or indirectly by an employer using the Table I rates in effect on June 30, 1999, the policy would continue to be treated as not carried directly or indirectly by the employer until the first plan year that begins after the general effective date.

Several comments received about the proposed special rule support the use of a special effective date for the purpose of determining whether a policy is carried directly or indirectly by the employer. However, most of those comments requested that the special rule be extended under certain identified circumstances. One commentator favored extending the special effective date for group-term coverage provided under a collectively bargained agreement. The commentator noted that collectively bargained plans may not be able to adjust rates within the time period of the proposed special rule because rate changes would require a substantive change to benefits in the middle of a contract. Two commentators suggested that the special effective date for a plan with a multi-year guarantee be extended until the end of the last plan year covered by the guarantee. Others suggested that the revised Table I rates not be effective for purposes of determining if the plan is carried directly or indirectly by the employer until there is a change in a plan's premium rates. Another comment addressed an issue under the definition of carried directly or indirectly by the employer different from the special effective date issue. The comment suggested that a policy not be treated as carried directly or indirectly by the employer if the policy charges employees actuarially determined, age-specific premium rates, rather than the rates in the five-year age brackets in Table I.

The IRS and Treasury agree that some additional time should be given to employee-pay-all plans that would previously not be subject to section 79. Accordingly, the final regulations provide a special rule under which, until January 1, 2003, an employer can use either the Table I rates in effect on June 30, 1999 or the new Table I rates in the final regulation for determining if a plan in existence on June 30, 1999 is carried directly or indirectly by the employer.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory

Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting information. The principal author of these regulations is Betty J. Clary, Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. Other personnel from the IRS and the Treasury Department also participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.79–1, paragraph (d)(7) is revised to read as follows:

§ 1.79–1 Group-term life insurance—general rules.

* * * * *

(d) * * *

(7) *Example.* The provisions of this paragraph may be illustrated by the following example:

Example. An employer provides insurance to employee A under a policy that meets the requirements of this section. Under the policy, A, who is 47 years old, received $70,000 of group-term life insurance and elects to receive a permanent benefit under the policy. A pays $2 for each $1,000 of group-term life insurance through payroll deductions and the employer pays the remainder of the premium for the group-term life insurance. The employer also pays one half of the premium specified in the policy for the permanent benefit. A pays the other half of the premium for the permanent benefit through payroll deductions. The policy specifies that the annual premium paid for the permanent benefit is $300. However, the amount of premium allocated to the permanent benefit by the formula in paragraph (d)(2) of this section is $350. A is a calendar year taxpayer; the policy year begins January 1. In year 2000, $200 is includible in A's income because of insurance provided by the employer. This amount is computed as follows:

(1) Cost of permanent benefits	$350
(2) Amounts considered paid by A for permanent benefits (½ × $300)	150
(3) Line (1) minus line (2)	200
(4) Cost of $70,000 of group-term life insurance under Table I of § 1.79–3	126
(5) Cost of $50,000 of group-term life insurance under Table I of § 1.79–3	90
(6) Cost of group-term insurance in excess of $50,000 (line (4) minus line(5))	36
(7) Amount considered paid by A for group-term life insurance (70 × $2)	140
(8) Line (6) minus line (7) (but not less than 0)	0
(9) Amount includible in income (line (3) plus line (8))	200

* * * * *

Par. 3. Section 1.79–3 is amended as follows:

1. Paragraph (d)(2) is revised.
2. Paragraphs (e) and (f) are redesignated as paragraphs (f) and (g), respectively.
3. New paragraph (e) is added.

The revision and addition read as follows:

§ 1.79–3 Determination of amount equal to cost of group-term life insurance.

* * * * *

(d) * * *

(2) For the cost of group-term life insurance provided after June 30, 1999, the following table sets forth the cost of $1,000 of group-term life insurance provided for one month, computed on the basis of 5-year age brackets. See 26 CFR 1.79–3(d)(2) in effect prior to July 1, 1999, and contained in the 26 CFR part 1 edition revised as of April 1, 1999, for a table setting forth the cost of group-term life insurance provided before July 1, 1999. For purposes of Table I, the age of the employee is the employee's attained age on the last day of the employee's taxable year.

TABLE I.—UNIFORM PREMIUMS FOR $1,000 OF GROUP-TERM LIFE INSURANCE PROTECTION

5-year age bracket	Cost per $1,000 of protection for one month
Under 25	$0.05
25 to 29	.06
30 to 34	.08
35 to 39	.09
40 to 44	.10
45 to 49	.15
50 to 54	.23
55 to 59	.43
60 to 64	.66
65 to 69	1.27
70 and above	2.06

* * * * *

(e) *Effective date*—(1) *General effective date for table.* Except as provided in paragraph (e)(2) of this section, the table in paragraph (d)(2) of this section is applicable July 1, 1999. Until January 1, 2000, an employer may calculate imputed income for all its employees under age 30 using the 5-year age bracket for ages 25 to 29.

(2) *Effective date for table for purposes of § 1.79–0.* For a policy of life insurance issued under a plan in existence on June 30, 1999, which would not be treated as carried directly or indirectly by an employer under § 1.79–0 (taking into account the Table I in effect on that date), until January 1, 2003, an employer may use either the table in paragraph (d)(2) of this section or the table in effect prior to July 1, 1999 (as described in paragraph (d)(2) of this section) for determining if the policy is carried directly or indirectly by the employer.

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: May 25, 1999.

Donald C. Lubick,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 99–13833 Filed 5–28–99; 11:22 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 009–0130a; FRL–6331–8]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Kern County Air Pollution Control District, Modoc County Air Pollution Control District, Mojave Desert Air Quality Management District, Northern Sonoma County Air Pollution Control District, San Joaquin Valley Unified Air Pollution Control District, Santa Barbara County Air Pollution Control District and Siskiyou County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the California State Implementation Plan (SIP). The revisions concern rules from the following seven districts: Kern County Air Pollution Control District, Modoc County Air Pollution Control District, Mojave Desert Air Quality Management District, Northern Sonoma County Air Pollution Control District, San Joaquin Valley Unified Air

Pollution Control District, Santa Barbara County Air Pollution Control District, and Siskiyou County Air Pollution Control District. These revisions concern the adoption of various administrative and other rules. This approval action will incorporate these rules into the Federally approved SIP. The intended effect of approving these rules is to update and clarify the SIP in accordance with the requirements of the Clean Air Act (CAA or the Act). Thus, EPA is finalizing the approval of these revisions into the California 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.

DATES: This rule is effective on August 2, 1999 without further notice, unless EPA receives adverse comments by July 6, 1999. If EPA receives such comment, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

Kern County Air Pollution Control District, 2700 ''M'' Street, Suite 302, Bakersfield, CA 93301–2370.

Modoc County Air Pollution Control District, 202 West Fourth Street, Alturas, CA 96101–3915.

Mojave Desert Air Quality Management District, 15428 Civic Drive, Suite 200, Victorville, CA 92392–2383.

Northern Sonoma County Air Pollution Control District, 150 Matheson Street, Healdsburg, CA 95448–4908.

San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, Suite 200, Fresno, California, 93721, and

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, Suite B23, Goleta, CA 93117.

Siskiyou County Air Pollution Control District, 525 South Foothill Drive, Yreka, California, 96097–3036.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1185.

SUPPLEMENTARY INFORMATION:

I. Applicability

The following is a list of the rules being approved into the California SIP by District.

Kern County APCD—Rule 101, Title; Rule 112, Circumvention; Rule 113, Separation and Combination; Rule 114, Severability; and Rule 115, Applicability of Emission Limits. These rules were adopted on May 2, 1996, submitted to EPA as a SIP revision on July 23, 1996, and found complete on October 30, 1996.[1]

Modoc County APCD—Rule 4.1–2, Uncombined Water; Rule 4.6, Circumvention; Rule 4.6–1, Exception to Circumvention; and Rule 4.9, Separation of Emissions. These rules were adopted on January 3, 1989, submitted to EPA as a SIP revision on December 31, 1990, and found complete on July 7, 1990.

Mojave Desert AQMD—Rule 103, Description of the District Boundaries was adopted on June 28, 1995, submitted to EPA as a SIP revision on August 10, 1995, and found complete on October 4, 1995.

Northern Sonoma County APCD—Unnumbered rule, known as Appendix A; Unnumbered rule, known as Appendix B; Unnumbered rule, formerly Appendix C, now known as Appendix A; and Unnumbered rule, formerly Appendix D, now known as Appendix B. These appendices were adopted on February 22, 1984 and submitted to EPA as a SIP revision on October 16, 1985.

San Joaquin Valley Unified APCD—Rule 1010, Title and Rule 1130, Severability were adopted on June 18, 1992, submitted to EPA as a SIP revision on September 28, 1994, and found complete on March 30, 1995.

Santa Barbara County APCD—Rule 105, Applicability adopted on July 30, 1991, submitted to EPA as a SIP revision on October 25, 1991, and found complete on December 18, 1991.

Siskiyou County APCD—Rule 4.10, Reduction of Animal Matter, adopted on January 24, 1989, submitted to EPA as a revision to the SIP on March 26, 1990, and found complete on February 28, 1991.

II. Background

The Clean Air Act of 1970 (CAA or the Act) requires the states to develop state implementation plans to enable local districts to attain and maintain national ambient air quality standards. Most of the rules listed above do not directly affect emission reductions. They were adopted, however, to help clarify the procedures and requirements of local air pollution control programs.

III. EPA Evaluation and Action

In determining the approvability of each local rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA, and 40 CFR Part 51. The EPA interpretation of these requirements, which forms the basis for this action, appears in various EPA policy guidance documents; see, in particular, ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** document'' (Blue Book).

These rules involve the names and boundaries of the local districts, prohibitions against circumvention of the rules, and directions on severing sections of the rules that might be unlawful. A more detailed description of the rules, the SIP modifications, and the basis for EPA's approval can be found in the evaluation report for this action.

EPA is publishing these rules without prior proposal because the Agency views these as noncontroversial amendments and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective August 2, 1999 without further notice unless the Agency receives adverse comments by July 6, 1999.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register**, informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in

[1] The submitted rules were found to be complete pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V. EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 2, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Orders 12866

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

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, 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 and 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 and safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the 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, 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, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: March 22, 1999.

Alexis Strauss,

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 F—California

2. Section 52.220 is amended by adding paragraphs (c)(164)(i)(B)(*2*), (179)(i)(E)(*2*), (182)(i)(F), (186)(i)(E), (199)(i)(D)(*4*), (224)(i)(C)(*2*), (239)(i)(C), and (239)(i)(D) introductory text to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(164) * * *

(i) * * *

(B) * * *

(*2*) Appendices A and B adopted on February 22, 1984.

* * * * *

(179) * * *

(i) * * *

(E) * * *

(*2*) Rule 4.10 adopted on January 24, 1989.

* * * * *

(182) * * *

(i) * * *

(F) Modoc County Air Pollution Control District.

(*1*) Rules 4.1–2, 4.6, 4.6–1, and 4.9 adopted on January 3, 1989.

* * * * *

(186) * * *

(i) * * *

(E) Santa Barbara County Air Pollution Control District.

(*1*) Rule 105 adopted on July 30, 1991.

* * * * *

(199) * * *

(i) * * *

(D) * * *

(*4*) Rule 1010 adopted on June 18, 1992 and Rule 1130 adopted on June 18, 1992 and amended on December 17, 1992.

* * * * *

(224) * * *

(i) * * *

(C) * * *

(2) Rule 103 amended on June 28, 1995.

* * * * *

(239) * * *

(i) * * *

(C) Kern County Air Pollution Control District.

(*1*) Rules 101, 112, 113, 114, and 115 amended on May 2, 1996.

(D) Ventura County Air Pollution Control District.

* * * * *

[FR Doc. 99–13657 Filed 6–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX83–1–7340a; FRL–6349–9]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Revision to the State Implementation Plan (SIP) Addressing Sulfur Dioxide in Harris County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: We are approving two revised Commission Orders modifying the sulfur dioxide (SO_2) allowable emissions at two stationary sources in Harris County, Texas. The Orders are separate, enforceable agreements between Simpson Pasadena Paper Company, Lyondel-Citgo Refining Company, and the Texas Natural Resource Conservation Commission (TNRCC). This action will incorporate these two Orders into the federally approved State Implementation Plan (SIP). The intention of this action is to regulate SO_2 emissions in accordance with the requirements of the Clean Air Act, as amended in 1990 (the Act).

DATES: This action is effective on August 2, 1999 without further notice, unless EPA receives relevant adverse comments by July 6, 1999. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments must be submitted to Mr. Thomas Diggs, Chief of Air Planning Section, EPA Region 6, 1445 Ross Avenue, Suite 1200 (6PD–L), Dallas, Texas 75202–2733. Copies of the technical support document are available for public review at the EPA Region 6 office during normal business hours. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, Air Planning Section, 1445 Ross Avenue, Suite 1200, 6PD–L, Dallas, Texas 75202–2733, telephone (214) 665–7214.

Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78753, telephone (512) 239–1461.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Ms. Petra Sanchez, Air Planning Section, (6PD–L), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733, telephone: (214) 665–6686.

SUPPLEMENTARY INFORMATION:

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I. Background Information
- A. What Action is EPA Taking in This Rulemaking?
- B. Why Were Changes In Emission Rates Necessary?
- C. What Is A SIP?
- D. What Are the Procedural Requirements Texas Must Follow for EPA Approval?
- E. What Are the Health Effects Associated With This Criteria Pollutant?
- F. What Are the NAAQS for SO_2?

II. Final Action

III. Administrative Requirements

I. Background Information

A. What Action Is EPA Taking in This Rulemaking?

The EPA is adopting two Agreed Commission Orders containing new emission limits at two facilities into the Harris County SIP for SO_2. The facilities are Simpson Pasadena Paper Company located at North Shaver Street at

Washburn Tunnel in Houston, Texas, and Lyondel-Citgo Refining Company, located at 12000 Lawndale, also in Houston, Texas. Changes to the emission limits were approved by the TNRCC through ''Agreed Commission Orders.'' This action adopts these Orders into the SIP and makes them federally enforceable. In the original SIP for Harris County, emission limits were developed for thirteen non-permitted sources, including Simpson and Lyondel. The EPA approved the Harris County SIP on March 6, 1995 (60 FR 12125), and the contents in the unrevised portions of the SIP remain the same. The reader is referred to this **Federal Register** document for additional background.

B. Why Were Changes in Emission Rates Necessary?

Lyondel-Citgo Refining Company (LCR)

The LCR revision corrects a minor technical problem found with the calculation for the SO_2 emission rate. In the original 1994, SIP submittal, hourly LCR allowable emission rates used for dispersion modeling calculated the annual average fuel gas rates instead of the LCR grandfathered firing rates, resulting in a maximum fuel gas hydrogen sulfide concentration of 160 parts per million (ppm) by volume. The annual average fuel gas emission rates were incorrectly converted to an hourly rate without taking into consideration grandfathered maximum hourly limits for the emission source. Adjusting the emission rates, however, would cause the combined emissions to rise from 199.42 to 263.39 pounds per hour (lbs/hr). Lyondel-Citgo Refining Company, therefore, submitted a request to modify their Agreed Commission Order to reflect their corrected emission rates. The request, with the supporting documentation and a revised dispersion modeling analysis to increase the SO_2 emission rates, was further evaluated by the TNRCC and then by EPA. The analysis demonstrates that the new emission rates from LCR will not cause a violation of the National Ambient Air Quality Standards (NAAQS) for SO_2.

The modeling results predict worst-case concentrations for the 3-hour, 24-hour, and annual averaging periods of 908 ug/m^3, (for the secondary 3-hour), 336 ug/m^3, (for the primary 24-hour standard) and 78 ug/m^3, (for the primary annual standard) respectively. All concentrations are below the applicable NAAQS of 1300 ug/m^3, 365 ug/m^3, and 80 ug/m^3 respectively.

The Industrial Source Complex Short-Term 3 model, and 5 years of meteorological data (i.e., 1981 through 1985) from the Houston Intercontinental surface station and the Lake Charles upper-air station were used for the analysis. Two emission inventories were used in the modeling, based on the original inventory provided by HRM and its contractor, Radian Incorporated. The second scenario used the updated inventory submitted by LCR. The differences from the first and second scenarios were observed, with respect to the 3-hour, 24-hour and annual SO_2 NAAQS. In addition, the differences from the first and second scenarios were added as an increment to the original Radian model results. The results predicted concentrations below the SO_2 NAAQS.

Simpson Pasadena Paper Company

Of the seven emission points identified in the original Commission Order for Simpson Pasadena, the largest is the No.6 Kraft Recovery Boiler (SN15, 400 pounds of SO_2 per hour). Simpson Pasadena submitted a request to modify their order by raising the emission limit on the No. 6 Kraft Recovery Boiler from 400 pounds/hour (lbs/hr) to 600 lbs/hr, when Boiler No. 7 is not operating. As a result, the maximum allowable SO_2 emissions from the two furnaces would decrease from 650 lbs/hr (400 and 250 lbs/hr, for No. 6 and No. 7, respectively) to 600 lbs/hr for one furnace. The revised order allows for this averaging on a permanent basis, whenever maintenance or malfunctions occur. Simpson Pasadena, however, is still responsible for notifying the TNRCC office whenever these temporary changes in emissions will occur, and provide an approximate duration time.

The air quality impact analysis submitted with the SIP revision request demonstrated that the net change in emissions from 650 lbs/hr to 600 lbs/hr would not cause or contribute to a violation of the SO_2 NAAQS.

The modeling approach was conducted in two phases. The first phase compared the predicted concentrations from the net change in emissions to the applicable SO_2 significance levels to determine if the modification was significant. The impacts were above the significance levels for the 3-hour and 24-hour averaging periods. Thus the second phase, a full analysis, was conducted using the complete emission inventory from the original attainment demonstration.

The modeling results predict worst-case concentrations for the 3-hour and 24-hour averaging periods of 691 micrograms/cubic meter (ug/m^3) and 227 ug/m^3, respectively. These concentrations demonstrated they were below the applicable NAAQS.

C. What Is a SIP?

Section 110 of the Act requires states to develop air pollution regulations and control strategies to ensure that State air quality meets the NAAQS established by the EPA. These ambient standards are established under section 109 of the Act and they address six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter and sulfur dioxide.

Each State must submit these regulations and control strategies to us for approval and incorporation into the federally enforceable SIP. Each State has a SIP designed to protect its air quality. These SIPs can be extensive, containing regulations, enforceable emission limits, emission inventories, monitoring networks, and modeling demonstrations. The Texas SIP contains various ''Agreed Commission Orders'' (Orders) to meet the SIP requirements and other State statutory requirements. The Orders are developed to contain specific conditions for a particular source and can provide specific conditions such as, emission limits, hours of operation, record keeping requirements, production rates, compliance demonstration requirements, etc., for a particular source. Once the Orders are adopted into the SIP, they become federally enforceable.

D. What Are the Procedural Requirements Texas Must Follow for EPA Approval?

The Act requires States to observe certain procedural requirements while developing SIPs for submission to the EPA. Section 110(l) of the Act requires that a revision to a SIP must be adopted by such State after reasonable notice and public hearing. The EPA must also determine whether a submittal is complete and warrants further action (see section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are found at 40 Code of Federal Regulations (CFR) part 51, appendix V. The submittal was determined to be administratively complete by EPA through a cover letter to the Governor of Texas on April 18, 1997.

The State of Texas held a public hearing on March 31, 1997, for public comment on these rule revisions. The SIP revision was then submitted by the Governor of Texas to the EPA by cover letter dated May 29, 1997. While there are no SO_2 nonattainment areas in Texas, the SIP must demonstrate

attainment and maintenance of the NAAQS.

All State regulations and supporting information approved by the EPA under section 110 of the Act are incorporated into the federally approved SIP. Records of such SIP actions are maintained in the 40 CFR part 52. The actual State regulations which were approved are not reproduced in their entirety in the CFR but are ''incorporated by reference,'' which means that the EPA has approved a given State regulation with a specific effective date.

E. What Are the Health Effects Associated With This Criteria Pollutant?

Sulfur dioxide belongs to the family of sulfur oxide gases. These gases are formed when fuel containing sulfur, such as coal and oil, is burned and during metal smelting, and other industrial process. Sulfur dioxide is a rapidly-diffusing reactive gas that is very soluble in water. Sulfur dioxide and oxides of nitrogen are the major precursors to acidic deposition (acid rain), and are associated with the acidification of lakes and streams, corrosion of buildings and monuments. They are also associated with reduced visibility. Sulfur dioxide in the Houston area is emitted principally from combustion, or processing, of sulfur-containing fossil fuels and ores. At elevated concentrations, sulfur dioxide can adversely affect human health. The major health concerns associated with exposure to high concentrations of SO_2 include effects on breathing, respiratory illness, alterations in the lungs' defenses, and aggravation of existing cardiovascular disease. Sulfur dioxide can also produce damage to the foliage of trees and agricultural crops.

F. What Are the NAAQS for SO_2?

The primary national ambient air quality standard for sulfur oxides, measured as SO_2, is 0.14 ppm, or 365 ug/m^3, averaged over a period of 24 hours and not to be exceeded more than once per year, and an annual standard of 0.030 ppm, or 80 ug/m^3, never to be exceeded. The secondary standard for SO_2 is 0.50 ppm, or 1300 ug/m^3 averaged over a three-hour period. The secondary standard may not be exceeded more than once per year.

II. Final Action

The EPA has evaluated the submitted Agreed Orders and their provisions along with the modeling demonstration to support the revised emission limits and has determined that they are consistent with the Act, EPA regulations, and EPA policy. Therefore, the revised Agreed Order Nos. 94–15 for Lyondel-Citgo, Refining Company, Ltd., and 94–22 for Simpson Pasadena Paper Company are being approved under section 110(k)(3) of the Act as meeting the requirements of section 110(a) and are acceptable revisions to the SIP. The EPA is publishing this action 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, the EPA is publishing a separate document that will serve as the proposal to approve the State Plan should relevant adverse comments be filed. This rule will be effective August 2, 1999 without further notice unless, by July 6, 1999, relevant adverse comments are received. If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective August 2, 1999.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future 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 (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

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 must 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 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, E.O. 13084 requires EPA to provide to 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. 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. 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 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 Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The 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.

The 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. 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 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 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 with 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).)

Lists of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by Reference, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: April 14, 1999.

Sammuel Coleman,

Acting Regional Administrator, Region 6.

40 CFR Part 52 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 SS—Texas

2. Section 52.2270 is amended by adding paragraph (116) to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(116) A revision to the Texas State Implementation Plan (SIP) to include two modified Agreed Orders limiting sulfur dioxide (SO_2) allowable emissions at two facilities in Harris County, submitted by the Governor by cover letter dated May 29, 1997.

(i) Incorporation by reference.

(A) TNRCC Docket No. 96–1188–AIR Order Modifying Commission Order No. 94–15 for Lyondel-Citgo Refining Company, LTD., as adopted by the TNRCC on June 29, 1994, and modified on July 31, 1996;

(B) TNRCC Docket No. 96–1187–AIR, Order Modifying Commission Order No. 94–22 for Simpson Pasadena Paper Company, as adopted by the TNRCC on June 29, 1994, and modified on July 31, 1996.

(ii) Additional material.

TNRCC submittal to the EPA dated May 29, 1997, entitled, ''Revisions to the SIP Concerning Sulfur Dioxide in Harris County.''

[FR Doc. 99–13800 Filed 6–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[SD–001–0003a and SD–001–0004a; FRL–6351–8]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; South Dakota Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA approves the South Dakota plan and regulations for controlling landfill gas emissions from existing municipal solid waste (MSW) landfills. South Dakota's regulations require existing MSW landfills to install a landfill gas collection and control system, if the MSW landfill's design capacity and non-methane organic compound (NMOC) emissions are above certain thresholds. South Dakota submitted its original plan to EPA on May 2, 1997 and then submitted revisions to the plan on May 6, 1999.

South Dakota submitted this plan to meet section 111(d) of the Clean Air Act (Act) and EPA's Emission Guidelines for existing MSW landfills at 40 CFR part 60, subpart Cc. We approve South Dakota's plan because the State has met these requirements.

DATES: This rule is effective on August 2, 1999 without further notice, unless we receive adverse comment by July 6, 1999. If we receive adverse comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: You should mail your written comments to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202. Copies of the documents relative to this action are available for inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466. Copies of the State documents relevant to this action are available for public inspection at the Department of Environmental and Natural Resources, Joe Foss Building, 523 East Capitol, Pierre, South Dakota 57501–3181.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, EPA Region VIII, (303) 312–6445.

SUPPLEMENTARY INFORMATION:

I. EPA Action

A. What Action Is EPA Taking Today?

We approve the South Dakota plan and regulations for controlling landfill gas emissions from existing municipal solid waste (MSW) landfills, except for those landfills located in Indian Country [1]. South Dakota submitted its original plan to us on May 2, 1997 and then submitted revisions to the plan on May 6, 1999. South Dakota's Plan includes the ''Section 111(d) State Plan for Municipal Solid Waste Landfills'' and the State's regulations in Sections 74:36:07:34 through 74:36:07:42 of the Administrative Rules of South Dakota (ARSD).

We are publishing this rule without prior proposal because we view this as a noncontroversial action and anticipate no adverse comments. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective August 2, 1999 without further notice unless we receive adverse comments by July 6, 1999. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

B. Why Is EPA Approving South Dakota's Plan for MSW Landfills?

We reviewed South Dakota's plan, as revised by the State, and found that it meets the general requirements for section 111(d) plans in 40 CFR part 60, subpart B, and the specific requirements for existing MSW landfills in 40 CFR part 60, subpart Cc (as revised on June 16, 1998, 63 FR 32743–53).

C. What Does the South Dakota Plan Contain?

South Dakota's plan includes:

1. A demonstration that South Dakota has adequate legal authority to adopt and implement the plan;
2. Sections 74:36:07:34 through 74:36:07:42 of the ARSD as the enforceable mechanism for implementing the Emission Guidelines;
3. An inventory of all existing MSW landfills subject to the State Plan, including an estimation of NMOC emissions and design capacity of each landfill;
4. Emission limits that are no less stringent than the Emission Guidelines;
5. A process for the State's review and approval of the design plan for a landfill's gas collection and control system;
6. A final compliance date of thirty months from the date of the first NMOC emission rate report showing emissions equal to or greater than 50 megagrams per year (Mg/yr);
7. ''Increments of progress'' deadlines to ensure the landfills are on track to meet the final compliance date;
8. Testing, monitoring, recordkeeping and reporting requirements for existing MSW landfills that are no less stringent than the Emission Guidelines;
9. A commitment to submit annual progress reports to EPA on implementation of the State Plan; and
10. Documentation that the State met all public participation requirements for its two rulemaking hearings. Further details of the State's Plan can be found in the Technical Support Document for this action, which you can obtain by contacting the Regional Office contact listed above. The specific requirements of the State's Plan as it applies to MSW landfills are described below.

D. What MSW Landfills Are Subject to South Dakota's Plan?

If you are the owner or operator of a MSW landfill in South Dakota, then you are subject to South Dakota's plan if

1. The landfill accepted waste since November 8, 1987;
2. The landfill was constructed, reconstructed, or modified before May 30, 1991; and
3. The landfill's design capacity is greater than or equal to 2.5 million Mg and 2.5 million m^3.

If your landfill was constructed, reconstructed, or modified after May 30, 1991, then you are subject to the New Source Performance Standard in 40 CFR part 60, subpart WWW (incorporated into the ARSD in section 74:36:07:43), rather than South Dakota's plan for ''existing landfills.'' If you have questions on how a MSW landfill is defined, refer to the definitions in 40 CFR part 60, subparts Cc and WWW.

If your landfill is located in Indian Country, then you will be subject to the Federal Plan which was proposed on December 16, 1998 (63 FR 69634–69684) and which will be finalized in the near future. We are not approving South Dakota's plan for landfills located in Indian Country. Note that we are currently discussing with the State and the Tribes how to describe Indian Country in South Dakota. A more specific description of Indian Country will be published in a future **Federal Register** notice concerning approval of the State's New Source Performance Standard for MSW landfills.

E. What Requirements Apply to MSW Landfills in South Dakota That Are Subject to the State's Plan?

If you are the owner or operator of an existing MSW landfill that South Dakota determined has a design capacity of 2.5 million Mg or 2.5 million m^3, then you must submit an initial report of your landfill's NMOC emission rate to the State by November 1, 1999. You must also submit updated NMOC emission rate reports annually or every five years as required by ARSD 74:36:07:42.01. The landfill's NMOC emission rate must be calculated in accordance with 40 CFR 60.754.

Once the landfill's NMOC emission rate is equal to or greater than 50 Mg/yr, then you must install a landfill gas collection and control system that meets the specifications of ARSD 74:36:07:36–37. You must also comply with the operational standards, compliance provisions, monitoring provisions, and recordkeeping and reporting

[1] See further discussion in Section I.D. of this preamble.

requirements in sections 74:36:07:39–42 of the ARSD.

F. By What Date Are Existing MSW Landfills Required To Comply With South Dakota's Plan?

If you are required to install a gas collection and control system, then you must complete construction of that system within thirty months of your first annual NMOC emission rate report showing emissions equal to or greater than 50 Mg/yr. You must also meet the interim deadlines specified in sections 74:36:07:35 and 38 for submitting your design plan, awarding contracts, beginning construction, and demonstrating compliance.

G. What Is a Section 111(d) State Plan?

Whenever we issue a New Source Performance Standard for a source category controlling a pollutant which is not a ''criteria pollutant'' regulated under section 110 of the Act or a hazardous air pollutant (HAP) regulated under section 112 of the Act, EPA must issue guidelines for controlling that pollutant at existing sources of the same source category. Criteria pollutants are pollutants for which EPA has issued national ambient air quality standards (NAAQS) (see 40 CFR part 50).

A section 111(d) State Plan must meet the Emission Guidelines which we issued for that source category, as well as the general requirements that apply to all section 111(d) plans in 40 CFR part 60, subpart B. States are required to submit plans meeting those requirements within nine months after publication of Emission Guidelines.

H. Why Did EPA Regulate Landfill Gas Emissions?

Landfill gas emissions contain a mixture of volatile organic compounds (VOCs), other organic compounds, methane, and HAPs. VOC emissions can contribute to ozone formation which can result in adverse effects to human health and vegetation. The health effects of HAPs include cancer, respiratory irritation, and damage to the nervous system. Methane emissions contribute to global climate change and can result in fires or explosions when they accumulate in structures on or off the landfill site. NMOC emissions are measured as a surrogate for MSW landfill emissions. We issued New Source Performance Standards to control landfill gas emissions from new, modified, or reconstructed MSW landfills on March 12, 1996. (See 40 CFR part 60, subpart WWW.) Since NMOCs are not a criteria pollutant or a HAP, we also issued Emission Guidelines for existing MSW landfills on March 12, 1996. (See 40 CFR part 60, subpart Cc.)

Note that we revised the Emission Guidelines and New Source Performance Standards for MSW landfills on June 16, 1998, in response to our proposed settlement in *National Solid Wastes Management Association* v. *Browner, et. al.,* No. 96–1152 (D.C. Cir). (See 63 FR 32743–32784). In addition, we issued technical amendments to the Emission Guidelines and New Source Performance Standard on February 24, 1999 (64 FR 9258–9262).

IV. What Are the Administrative Requirements Associated With This Action?

A. Executive Order 12866

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

B. Executive Order 12875

Enhancing the Intergovernmental Partnership

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

C. Executive Order 13045

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 Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly 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 Executive Order 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 State Plan approvals under section 111 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 approval of the State Plan 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 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 here 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 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 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Methane, Municipal solid waste landfills, Nonmethane organic compounds, Reporting and recordkeeping requirements.

Dated: May 21, 1999.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

40 CFR part 62, subpart QQ, of chapter I, title 40 is amended as follows:

PART 62—[AMENDED]

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

Authority: 42 U.S.C. 7401–7642.

2. Subpart QQ is added to read as follows:

Subpart QQ—South Dakota

Sec.

62.10350 Identification of plan.
62.10351 Identification of sources.
62.10352 Effective date.

Subpart QQ—South Dakota

Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

§ 62.10350 Identification of plan.

''Section 111(d) State Plan for Municipal Solid Waste Landfills'' and the State's implementing regulations in Sections 74:36:07:34 through 74:36:07:42 of the Administrative Rules of South Dakota (ARSD), submitted by the State on May 2, 1997 with amendments to the plan submitted on May 6, 1999.

§ 62.10351 Identification of sources.

The plan applies to all existing municipal solid waste landfills for which construction, reconstruction, or modification was commenced before May 30, 1991 that accepted waste at any time since November 8, 1987 or that have additional capacity available for future waste deposition, as described in 40 CFR part 60, subpart Cc.

§ 62.10352 Effective date.

The effective date of the plan for municipal solid waste landfills is August 2, 1999.

[FR Doc. 99–13797 Filed 6–2–99; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AD74

Migratory Bird Hunting: Regulations Regarding Baiting and Baited Areas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, amend the baiting regulations that apply to any person taking migratory game birds in the United States and/or preparing areas where migratory game birds are hunted. We include new definitions for ''baiting,'' ''baited areas,'' ''normal agricultural planting, harvesting, and post-harvest manipulation'', ''normal agricultural operation,'' ''normal soil stabilization practice,'' ''natural vegetation'' and ''manipulation,'' and use these terms to identify allowable hunting methods.

EFFECTIVE DATE: This rule is effective July 6, 1999.

ADDRESSES: You may inspect public written comments by appointment between the hours of 8:00 a.m. and 4:30

p.m., Monday through Friday, in Room 500, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia 22203–3247; telephone (703) 358–1949.

FOR FURTHER INFORMATION CONTACT:

Questions may be directed to either:

Refuges and Wildlife: Paul Schmidt, 703–358–1769.

Office of Law Enforcement: Kevin Adams, 703–358–1949.

SUPPLEMENTARY INFORMATION:

Statutory Authority for Rulemaking

We have statutory authority and responsibility for enforcing the Migratory Bird Treaty Act (MBTA) in 16 U.S.C. 703–712 and 16 U.S.C. 742a–j. The MBTA regulates activities involving migratory birds, such as take, possession, transport, sale, and barter. Additionally, the MBTA authorizes us to make determinations about the conditions under which migratory game birds may be hunted. In general, these determinations include prohibitions on certain activities, such as baiting, and provisions that allow hunting in certain areas, such as agricultural areas and areas of natural vegetation. Regulations covering migratory game bird hunting are contained in 50 CFR Part 20.

Purpose of Rulemaking

This rule clarifies the current migratory bird hunting regulations. It provides a framework for sound habitat management, normal agricultural activities, and other practices as they relate to lawful migratory game bird hunting.

Related Federal Register Documents

The review process that produced this rule began in 1991. The review process consisted of numerous, related **Federal Register** documents, as follows: (1) November 14, 1991 (56 FR 57872), notice of intent to review multiple wildlife regulations (50 CFR Parts 12, 13, 14, 20, 21, 22); (2) December 1, 1993 (58 FR 53488), notice of intent to review the migratory bird regulations (50 CFR Parts 20 and 21); (3) March 22, 1996 (61 FR 11805), notice of intent to review the migratory game bird baiting regulations for moist soil management aspects (50 CFR Part 20); (4) March 25, 1998 (63 FR 11415), proposed rule to clarify and simplify the migratory game bird baiting regulations for migratory game bird hunting (50 CFR Part 20); (5) May 22, 1998 (63 FR 28343), notice to extend the comment period on No. 4 (above) to October 1, 1998 (50 CFR Part 20); and (6) October 6, 1998 (63 FR 53635), notice to extend the comment period on No. 4 (above) to October 22, 1998 (50 CFR Part 20).

Summary of Comments on the Notice of Intent and Proposed Rule

In the March 22, 1996, notice of intent, we specified four issues of concern regarding moist-soil management: potential impacts on available habitat, waterfowl populations, law enforcement and existing case law. In the March 25, 1998, proposed rule, we then invited comments on proposed changes to the migratory game bird baiting regulations. We received 509 comments in response. We have carefully reviewed and considered all comments received, including those from hunters, land managers, natural resource professionals, and law enforcement officers during preparation of this rule.

Comments received in response to the proposed rule primarily addressed the following issues: (1) Application of the strict liability standard to migratory game bird baiting regulations, (2) alternate penalties, (3) agricultural terms and definitions, (4) hunting over top-sown seeds, (5) manipulating natural vegetation, (6) millet as natural vegetation, (7) accidental scattering of seeds or grains incidental to hunting activities, (8) concealing blinds with natural vegetation, and (9) concerns about potential impacts on migratory bird habitat and populations.

(1) Application of the Strict Liability Standard

The proposed rule was published before passage of a new Public Law that affects the application of strict liability to migratory game bird baiting offenses. On October 30, 1998, Public Law 105-312 replaced the strict liability standard with a new standard. This law now prohibits the taking of migratory game birds *by the aid of baiting, or on or over any baited area, if the person knows or reasonably should know that the area is a baited area.* In addition, it is now a separate offense to *place or direct the placement of bait on or adjacent to an area for the purpose of causing, inducing, or allowing any person to take or attempt to take any migratory game bird by the aid of baiting or on or over the baited area.* The final rule reflects these changes to the underlying statute.

(2) Alternate Penalties

Because violations of the MBTA are criminal offenses, the proposed rule invited the public to identify alternatives to the existing penalty provisions for baiting. We received 19 comments about this issue, but due to recent legislation do not include any changes from the comments in this rule. In addition to removing strict liability for baiting offenses, Public Law 105-312 changes the penalty provisions by increasing the penalty for any person who takes migratory game birds with the aid of bait or over a baited area, and adds a penalty for any person found responsible for the placement of bait. This rule incorporates the statutory revisions concerning baiting.

(3) Agricultural Terms and Definitions

The proposed rule addressed two current exemptions allowing migratory game bird hunting over agricultural lands. The current exemptions are separated into those practices allowed for hunting waterfowl, and those allowed for the hunting of other migratory game birds, such as doves. We proposed to consolidate the allowed practices into one term, *normal agricultural and soil stabilization practice,* that would apply to the hunting of all migratory game birds in agricultural areas. We received 43 comments about this issue. Although we intended to simplify the rules using one term, the comments reflected concern that this change could potentially restrict hunting methods currently allowed in agricultural areas. Other comments reflected concern that the new term could potentially liberalize the regulations for migratory game bird hunting in agricultural areas, especially for waterfowl.

After careful consideration of the comments, we decided to maintain the current distinction between those agricultural practices allowed for the hunting of waterfowl, cranes, and coots, and those agricultural practices allowed for the hunting of other migratory game birds, such as doves and pigeons, by the addition of three new agricultural terms and definitions: (1) *Normal agricultural planting, harvesting, and post-harvest manipulation,* (2) *normal agricultural operation, and* (3) *normal soil stabilization practice.* The hunting of any migratory game bird, including waterfowl, coots, and cranes, is allowed over lands where either a *normal agricultural planting, harvesting, and post-harvest manipulation* or *normal soil stabilization practice* has occurred, as defined in this rule. The term *normal soil stabilization practice* includes plantings made solely for agricultural soil erosion control or post-mining land reclamation. Finally, the hunting of migratory game birds, except waterfowl, coots, and cranes, is allowed over a *normal agricultural operation,* also defined in this rule. In order to meet the definitions in this rule, all of these practices must be conducted in accordance with official recommendations of State Extension

Specialists of the Cooperative Extension Service of the U.S. Department of Agriculture.

(4) Hunting Over Top-Sown Seeds

The current regulations require a hunter to determine before hunting whether a hunting area has been subjected to a normal agricultural planting or harvesting, a bona fide agricultural operation, a wildlife management practice, or whether the area had been baited with seeds or grains to illegally lure migratory game birds. The proposed rule included a change to prohibit the hunting of all migratory game birds over any lands planted by means of top sowing or aerial seeding where seeds remained on the ground as a result. The prohibition was intended to apply regardless of the purpose of the seeding, and top sowing was explicitly excluded from the proposed term, *normal agricultural and soil stabilization practice*.

We received 221 comments about this issue. The majority of comments opposing this change reflected concern that the change could restrict a valid agricultural practice affecting large areas of land, and discourage both habitat management and migratory game bird hunting in those areas. Other comments reflected concern that this change would adversely affect a time-honored, traditional form of hunting, especially for doves, over prepared agricultural fields. Comments that supported the change indicated that farmers would continue to plant using this method regardless of the hunting prohibition because they could still hunt migratory game birds, specifically doves, using other allowable hunting methods. Other comments supported the change as the only way to resolve the difficulty in determining whether a top-sown field had been planted for agricultural purposes.

After careful consideration, we will not prohibit the hunting of migratory game birds over lands planted by means of top sowing or aerial seeding. Instead, we will allow the hunting of any migratory game bird, including doves, over lands planted by means of top sowing or aerial seeding if seeds are present solely as the result of a *normal agricultural planting*, or a *normal soil stabilization practice*.

We have included post-mining land reclamations that are consistent with plantings for agricultural soil erosion control in the definition of a *normal soil stabilization practice*. These lands were included to provide hunting opportunities on land reclamations in non-agricultural areas.

Whether agricultural plantings, harvestings, post-harvest manipulations, operations, or soil stabilization practices are ''normal'' must be gauged against an objective standard. Therefore, this rule incorporates our policy to rely upon State Extension Specialists of the Cooperative Extension Service of the U.S. Department of Agriculture (USDA) as the best source of factual and objective information on recommended planting, cultivation, harvest, and utilization of agricultural crops. These State Extension Specialists make recommendations about agricultural practices that may vary from state-to-state or region-to-region within a state. The recommendations may be site-specific, and may or may not be published. However, the Service will continue to make final determinations about whether the official recommendations were followed.

(5) Manipulating Natural Vegetation

We recognize the value derived from the manipulation of soil, water, and vegetation to enhance migratory bird and other wildlife habitat. Such manipulation, or moist-soil management, often involves the artificial maintenance and restoration of natural vegetation. In response to concerns about various moist-soil management techniques that could result in potential baiting situations, the proposed rule attempted to provide hunters, landowners, land managers, and law enforcement officers with guidance about what constitutes baiting in areas of natural vegetation. We invited the public to comment on the proposed rule to ensure that it could be readily understood and enforced, and was flexible enough to allow habitat managers to perform needed wildlife management practices. The proposed rule would have allowed the hunting of migratory waterfowl and cranes over any natural vegetation that had been manipulated at least 10 days before the opening of any waterfowl season and not during any open waterfowl season. The 10-day limitation was not intended to apply to the hunting of other migratory game birds, such as doves.

We received 215 comments about this issue. Comments supporting unrestricted manipulation of natural vegetation reflected concern that this change, if adopted with the 10-day, open-season requirement, could potentially further restrict current moist-soil management activities rather than provide the needed flexibility for habitat managers. Comments opposing manipulation of natural vegetation reflected concern that this change could potentially liberalize the current regulations, and create situations where a determination about the timing and presence of seeds would be difficult and onerous for all affected parties. The current regulations were never intended to prevent the manipulation of naturally-vegetated areas, or discourage moist-soil management practices that benefit migratory birds. After due consideration of all concerns, we decided to allow the hunting of any migratory game bird over manipulated natural vegetation without any restrictions.

(6) Millet as Natural Vegetation

Millet can be utilized both as an agricultural crop and as a species of natural vegetation for moist-soil management. Because millet can be readily naturalized and serve as an important food source for migrating and wintering waterfowl, the proposed rule invited comments on whether to include millet as a form of natural vegetation and allow its manipulation prior to subsequent hunting. We received 136 comments about this issue. Comments supporting the inclusion of millet expressed concerns that the restrictions on its manipulation were too restrictive, burdensome, and not as effective for moist-soil management as possible. Comments opposing the inclusion of millet reflected concerns that the manipulation of millet before subsequent hunting could potentially conflict with the current regulations that prohibit hunting over manipulated agricultural crops.

After consideration of these comments, we concluded that inclusion of millet as natural vegetation and its manipulation could conflict with current regulations. Therefore, this rule explicitly excludes planted millet from the new term, *natural vegetation*. However, planted millet that grows on its own in subsequent years (naturalized) is considered natural vegetation that can be manipulated at any time without restriction.

(7) Accidental Scattering

The proposed rule included a provision to allow hunting where grains or seeds from agricultural crops or natural vegetation had been scattered as a result of hunters entering or exiting areas, placing decoys, or retrieving downed birds. This provision was included to provide clarity to hunters about concerns that seeds or grains accidentally scattered during lawful hunting activities could create potential baiting situations.

We received 37 comments about this issue. Comments that supported this provision reflected concerns about

application of the strict liability standard to hunting over such seeds or grains. Comments that opposed this provision reflected concerns that it could potentially encourage hunters to bait an area and then claim that accidental scattering had occurred, and result in considerable difficulty for enforcement officers and the courts.

To alleviate the concerns of hunters, we will allow hunting over grains that are inadvertently scattered from standing or flooded standing crops solely as the result of a hunter entering or exiting a hunting area, placing decoys, or retrieving downed birds. Because this final rule also allows hunting over manipulated natural vegetation, no provision is needed for the inadvertent scattering of seeds from standing natural vegetation.

(8) Concealing Blinds With Natural Vegetation

To effectively hunt in areas of natural vegetation, hunters use natural vegetation to conceal themselves. The use of natural vegetation on blinds or places of concealment may result in the scattering of seeds and may create a potential baiting situation. The proposed rule included a provision to allow the hunting of any migratory game birds from a blind or other place of concealment camouflaged with natural vegetation. We received 18 comments about this issue. Although this rule does not restrict the manipulation of natural vegetation, we provide clarity to hunters by including a provision that allows the take of migratory game birds from a blind or other place of concealment camouflaged with natural vegetation. In addition, we include a provision that allows the hunting of migratory game birds from a blind or other place of concealment camouflaged with vegetation from agricultural crops as long as the use of such camouflage does not result in the exposing, depositing, distributing, or scattering of grain or other feed.

(9) Concerns About Potential Impacts on Migratory Bird Habitat and Populations

As we indicated in the March 25, 1998, proposed rule, we believe that one of the most important factors affecting waterfowl and other migratory bird populations is the amount and availability of quality habitat. For waterfowl, we believe the loss and degradation of habitat is the most serious threat facing North America's populations. North America has lost many of its original wetlands. Overall, the lower 48 States have lost about 53% of their original wetlands. In many of the remaining wetlands, large-scale land-use changes have often altered the natural water regime to the point that they are no longer ecologically functional.

One of the primary ways we have attempted to address this loss of wetland habitat is through implementation of the North American Waterfowl Management Plan (Plan). Established in 1986, the Plan identifies key waterfowl habitat areas and through habitat joint ventures implements habitat conservation projects. Habitat joint ventures are regional public/private partnerships composed of individuals, corporations, conservation organizations, and local, state, and federal agencies that work together to protect and restore habitat.

For example, the Central Valley Habitat Joint Venture is comprised of California's San Joaquin and Sacramento valleys. This vitally important migratory bird area provides wintering habitat for 60 percent of the waterfowl in the Pacific Flyway and includes the primary wintering area for cackling Canada geese, the threatened Aleutian Canada goose, and a number of other endangered species. Almost 4 million acres (95 percent) of wetlands in the Central Valley have been lost to drainage and conversion to agricultural land. Only about 300,000 acres remain to support and maintain waterfowl. Central Valley Habitat Joint Venture efforts focus on protecting and enhancing remaining wetlands, restoring or creating additional wetlands, enhancing private agricultural lands, and securing dependable water supplies for wetland areas.

To mitigate for the extensive loss and alteration of wetlands, it is critical that wildlife managers intensively manage many of the remaining wetland areas to maximize their value to wildlife, especially migratory birds, through moist-soil management. Moist-soil management, or the management of man-made, seasonally flooded impoundments, is a technique that uses manipulation of soil, water, and vegetation to enhance habitat for migratory birds. Modern moist-soil management includes water level manipulation, planting, mowing, burning, and other practices to: (1) Encourage production of moist soil plants for use by wildlife, especially migratory birds; (2) promote the production of invertebrate and vertebrate food sources; (3) control undesirable plants; and (4) increase biological diversity. Moist-soil plants provide essential nutritional requirements, consistently produce more pounds and diversity of food per acre than agricultural crops, provide seeds that are more nutritionally complete and resistant to decay when flooded (providing longer and more constant use by waterfowl), and are more economical and efficient to manage than agricultural crops.

To help stem wetland habitat loss, the migratory bird management community realized that it would take the concerted effort of many parties working together toward a common goal. Principal among this concerted effort is the involvement of private landowners, since the vast majority of wetland and other migratory bird habitat will always remain in private ownership. Thus, to actively invite and encourage participation from private landowners in migratory bird habitat conservation efforts, we believe new and innovative approaches to our traditional habitat protection and management programs are required.

We believe that our programs should not discourage private landowners and others in their efforts to conserve, restore, and manage wetland areas for the benefit of migratory birds and other wildlife. Thus, practices such as moist-soil management should not be discouraged, but openly encouraged. However, modern moist-soil management presented us with several issues and potential conflicts regarding moist-soil management practices and baiting. Several commenters throughout this process have pointed out that some of these moist-soil management practices could technically result in the creation of potential baiting situations when seeds from moist-soil management plants become available as a result of a manipulation. In the proposed rule, we acknowledged that the current baiting regulations were not intended to prevent the manipulation of natural vegetation such as that found in moist-soil management areas or to discourage moist-soil management practices benefitting migratory birds.

To address the moist-soil management issues, we made several specific regulatory changes to ensure that this valuable wildlife management practice continues to be encouraged while also clarifying to land managers and hunters what constitutes baiting. By allowing the manipulation of natural vegetation at any time, this rule enables wildlife habitat managers to conduct valuable moist-soil management in wetland areas and promote increased benefits to migratory birds and other wildlife. By encouraging moist-soil management techniques such as manipulation of natural vegetation, waterfowl populations will benefit from additional feeding, roosting, and resting habitat in important migration and wintering areas.

Summary of Changes

1. New Definitions for Section 20.11, Meaning of Terms

We define *Normal agricultural planting, harvesting, or post-harvest manipulation* and use the term in Section 20.21(i) to allow the hunting of any migratory game birds in agricultural areas over seeds and grains that are present solely as the result of a *normal agricultural planting, harvesting, or post-harvest manipulation*.

We define *Normal agricultural operation* and use the term in Section 20.21(i) to allow a hunter to take migratory game birds, except waterfowl, cranes, and coots, in agricultural areas over seeds or grains that are present solely as the result of a *normal agricultural operation*.

We define *Normal soil stabilization practice* and use the term in Section 20.21(i) to allow the hunting of any migratory game bird in agricultural or post-mining land reclamation areas over seeds that are present solely as the result of a *normal soil stabilization practice*.

We define *Manipulation* and use the term in 20.21(i) to explain which hunting activities are permitted over *manipulated* lands. Migratory game birds, except waterfowl, coots, and cranes, may be hunted over a *manipulated* agricultural crop. Any migratory game bird, including waterfowl, coots, and cranes, may be hunted over *manipulated* natural vegetation.

We define *Natural vegetation* and use the term in 20.21(i) to allow the hunting of migratory game birds over manipulated *natural vegetation*.

We define *Baited area* and use the term in 20.21(i) to prohibit the hunting on or over any *baited area* where a person knows or reasonably should know that the area is or has been baited.

We define *Baiting* and use the term in section 20.21(i) to prohibit the hunting by the aid of *baiting* where a person knows or reasonably should know that the area is or has been baited.

2. New Methods of Take, Section 20.21(i)

We revised the current prohibition in the introductory text to this paragraph to incorporate the new standard created by Public Law 105–312.

The introductory text for paragraph 20.21(i) of this rule does not prohibit the following:

The taking of any migratory game bird, including waterfowl, coots, and cranes, on or over the following lands or areas that are not otherwise baited areas—

Paragraph 20.21(i)1(i) of this rule allows the hunting of any migratory game birds over lands planted by means of top sowing or aerial seeding if seeds are present solely as the result of a *normal agricultural planting* or a *normal soil stabilization practice*. This rule also allows the take of any migratory game birds over areas where natural vegetation has been manipulated by such activities as mowing or burning, and treats all natural vegetation in the same manner.

Paragraph 20.21(i)1(ii) includes a provision to allow the take of migratory game birds from a blind or other place of concealment camouflaged with natural vegetation.

Paragraph 20.21(i)1(iii) includes language to allow the take of migratory game birds from a blind or other place of concealment camouflaged with vegetation from agricultural crops if it does not result in the exposing, depositing, distributing, or scattering of grain or other feed that would constitute a potential baiting situation.

Paragraph 20.21(i)1(iv) of this rule allows the hunting of any migratory game bird over an area of standing or flooded standing agricultural crops where the hunter has inadvertently scattered grains. This provision does not address the scattering of seeds from natural vegetation because this rule allows the manipulation of natural vegetation at the site where grown.

Paragraph 20.21(i)2 of this rule changes the current regulation that allowed the hunting of migratory game birds, except waterfowl, over a *bona fide agricultural operation*, and replaces it with the term *normal agricultural operation*.

Required Determinations

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule contains no information collection requirements under the Paperwork Reduction Act of 1995 requiring Office of Management and Budget review.

Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1502 et seq.)

This rule will not result in a significant annual effect on the economy of $100 million or more. The U.S. Department of Agriculture publishes a directory of State Extension Specialists who provide factual and objective information on recommended plantings, cultivation, harvest, and utilization of agricultural crops. This rule has no foreseen significant adverse effects on the economy. Therefore, we have determined and certified pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on State, local or tribal governments or private entities.

Federalism

As discussed above, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment under Executive Order 12612.

Regulatory Planning and Review (Executive Order 12866)

This document has been reviewed by the Office of Management and Budget in accordance with the criteria in Executive Order 12866.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act (ESA) of 1972, as amended (16 U.S.C. 1538 *et seq.*) provides that Federal agencies shall insure that any action authorized, funded, or carried out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat. We found that no Section 7 consultation under the ESA was required for this rule.

Small Business Regulatory Enforcement Fairness Act

As discussed below, this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of $100 million or more and will not cause a major increase in costs or prices for consumer, individual industries, Federal, State, or local government agencies, or geographic regions. Also, this rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.—based enterprises to compete with foreign-based enterprises.

Regulatory Flexibility Act Determination (5 U.S.C. 601)

This rulemaking will have no significant effect on small entities. This rule is an update to the current regulations governing baiting and migratory game bird hunting. Hunters and other affected parties are not likely to suffer dislocation or other local effects. The changes clarify and modify the ways that migratory game birds may be hunted, and add new definitions for terms used in Part 20. This rule adds our policy to rely upon State Extension Specialists of the Cooperative Extension Service of the U.S. Department of

Agriculture as the best source of factual and objective information on recommended planting, cultivation, harvest, and utilization of agricultural crops. The changes may encourage some landowners to open their land for migratory game bird hunting. This additional land would improve the hunting experience for 2.4 million people who hunt migratory game birds on private land. The estimated value of this benefit is $3.8 to $14.6 million per year. Farmers who lease their land may capture $2.4 million of this benefit. Many of the parties affected are small entities and we believe they will receive minor economic benefits if any.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of section 3(a) and 3(b)(2) of the Order.

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required because migratory birds are a federally managed resource under laws implementing international treaties and are not personal property.

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

We have determined that National Environmental Policy Act documentation is not required because this rule qualified as a categorical exclusion under the Department of the Interior's NEPA procedures in 516 DM 2, Appendix 1.10. Results of this finding are available to the public by contacting us at the number listed under **ADDRESSES.** This final rule provides added benefits to the migratory bird resource by promoting available habitat through moist-soil management and by changing and clarifying current methods for hunting migratory game birds in agriculture areas, areas of natural vegetation, and over post-mining land reclamation areas.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and Recordkeeping Requirements, Transportation, Wildlife.

Regulation Promulgation

For the reasons set out in the preamble, we amend Title 50, Chapter I, subchapter B of the Code of Federal Regulations as set forth below:

PART 20—MIGRATORY BIRD HUNTING

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

Authority: 16 U.S.C. 703–712, 16 U.S.C. 742a–j.

2. Revise the title of § 20.11 and add new paragraphs (g), (h), (i), (j), (k), (l) and (m) to read as follows:

§ 20.11 What terms do I need to understand?

* * * * *

(g) *Normal agricultural planting, harvesting, or post-harvest manipulation* means a planting or harvesting undertaken for the purpose of producing and gathering a crop, or manipulation after such harvest and removal of grain, that is conducted in accordance with official recommendations of State Extension Specialists of the Cooperative Extension Service of the U.S. Department of Agriculture.

(h) *Normal agricultural operation* means a normal agricultural planting, harvesting, post-harvest manipulation, or agricultural practice, that is conducted in accordance with official recommendations of State Extension Specialists of the Cooperative Extension Service of the U.S. Department of Agriculture.

(i) *Normal soil stabilization practice* means a planting for agricultural soil erosion control or post-mining land reclamation conducted in accordance with official recommendations of State Extension Specialists of the Cooperative Extension Service of the U.S. Department of Agriculture for agricultural soil erosion control.

(j) *Baited area* means any area on which salt, grain, or other feed has been placed, exposed, deposited, distributed, or scattered, if that salt, grain, or other feed could serve as a lure or attraction for migratory game birds to, on, or over areas where hunters are attempting to take them. Any such area will remain a baited area for ten days following the complete removal of all such salt, grain, or other feed.

(k) *Baiting* means the direct or indirect placing, exposing, depositing, distributing, or scattering of salt, grain, or other feed that could serve as a lure or attraction for migratory game birds to, on, or over any areas where hunters are attempting to take them.

(l) *Manipulation* means the alteration of natural vegetation or agricultural crops by activities that include but are not limited to mowing, shredding, discing, rolling, chopping, trampling, flattening, burning, or herbicide treatments. The term *manipulation* does not include the distributing or scattering of grain, seed, or other feed after removal from or storage on the field where grown.

(m) *Natural vegetation* means any non-agricultural, native, or naturalized plant species that grows at a site in response to planting or from existing seeds or other propagules. The term *natural vegetation* does not include planted millet. However, planted millet that grows on its own in subsequent years after the year of planting is considered *natural vegetation*.

3. Amend § 20.21 by revising the section title and paragraph (i) to read as follows:

§ 20.21 What hunting methods are illegal?

* * * * *

(i) By the aid of baiting, or on or over any baited area, where a person knows or reasonably should know that the area is or has been baited. However, nothing in this paragraph prohibits:

(1) the taking of any migratory game bird, including waterfowl, coots, and cranes, on or over the following lands or areas that are not otherwise baited areas—

(i) Standing crops or flooded standing crops (including aquatics); standing, flooded, or manipulated natural vegetation; flooded harvested croplands; or lands or areas where seeds or grains have been scattered solely as the result of a normal agricultural planting, harvesting, post-harvest manipulation or normal soil stabilization practice;

(ii) From a blind or other place of concealment camouflaged with natural vegetation;

(iii) From a blind or other place of concealment camouflaged with vegetation from agricultural crops, as long as such camouflaging does not result in the exposing, depositing, distributing or scattering of grain or other feed; or

(iv) Standing or flooded standing agricultural crops where grain is inadvertently scattered solely as a result of a hunter entering or exiting a hunting area, placing decoys, or retrieving downed birds.

(2) The taking of any migratory game bird, except waterfowl, coots and cranes, on or over lands or areas that are not otherwise baited areas, and where grain or other feed has been distributed or scattered solely as the result of manipulation of an agricultural crop or other feed on the land where grown, or solely as the result of a normal agricultural operation.

* * * * *

Dated: March 22, 1999.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–14039 Filed 6–2–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No.950427117–9149–09;I.D.052799C]

RIN 0648–AH97

Sea Turtle Conservation; Restrictions Applicable to Shrimp Trawl Activities; Leatherback Conservation Zone

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

ACTION: Temporary rule.

SUMMARY: NMFS is extending for 1 week its existing closure of all inshore waters and offshore waters out to 10 nautical miles (nm) (18.5 km) seaward of the COLREGS demarcation line bounded by 33° N. lat. and 34° N. lat. within the leatherback conservation zone, to fishing by shrimp trawlers required to have a turtle excluder device (TED) installed in each net that is rigged for fishing, unless the TED has an escape opening large enough to exclude leatherback turtles, as specified in the regulations. This action is necessary to reduce mortality of endangered leatherback sea turtles incidentally captured in shrimp trawls.

DATES: This action is effective from May 28, 1999 through 11:59 p.m. (local time) on June 11, 1999.

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz, (727) 570–5312, or Barbara A. Schroeder (301) 713–1401. For assistance in modifying TED escape openings to exclude leatherback sea turtles, fishermen may contact gear specialists at the NMFS, Pascagoula, MS laboratory by phone (228) 762–4591 or by fax (228) 769–8699.

SUPPLEMENTARY INFORMATION: The taking of sea turtles is governed by regulations implementing the Endangered Species Act (ESA) at 50 CFR parts 222 and 223 (see 64 FR 14051, March 23, 1999, final rule consolidating and reorganizing ESA regulations). Generally, the taking of sea turtles is prohibited. However, the incidental take of turtles during shrimp fishing in the Atlantic Ocean off the coast of the southeastern United States and in the Gulf of Mexico is excepted from the taking prohibition pursuant to sea turtle conservation regulations at 50 CFR 223.206, which include a requirement that shrimp trawlers have a NMFS-approved TED installed in each net rigged for fishing. The use of TEDs significantly reduces mortality of loggerhead, green, Kemp's ridley, and hawksbill sea turtles. Because leatherback turtles are larger than the escape openings of most NMFS-approved TEDs, use of these TEDs is not an effective means of protecting leatherback turtles.

Through a final rule (60 FR 47713, September 14, 1995), NMFS established regulations to protect leatherback turtles when they occur in locally high densities during their annual, spring northward migration along the Atlantic seaboard. Within the leatherback conservation zone, NMFS is required to close an area for 2 weeks all inshore and offshore waters out to 10 nm (18.5 km) seaward of the COLREGS demarcation line (as defined at 33 CFR part 80), when leatherback sightings exceed 10 animals per 50 nm (92.6 km) during repeated aerial surveys pursuant to 50 CFR 223.206(d)(2)(iv)(A) through (C).

NMFS announced a two-week closure on May 7, 1999 (64 FR 25460, May 12, 1999), affecting the portion of the leatherback conservation zone between 32° N. lat. and 33° N. lat. The boundaries of the closure correspond to those of shrimp fishery statistical zone 32. The closure was based on high concentrations of leatherbacks off the South Carolina coast, observed during aerial surveys conducted on April 27 and May 3. During those surveys, the highest concentrations were noted in waters off the southern half of the state between Hilton Head Island, SC, and at Kiawah Island, SC. After a May 11 aerial survey reconfirmed the continued high abundance of leatherback turtles in that closed zone, NMFS extended the closure for an additional week, through May 28, 1999 (64 FR 27206, May 19, 1999). That survey also showed that the leatherbacks were continuing to move slowly northward, as expected. Concentrations of leatherbacks were noted between Murrells Inlet and Myrtle Beach.

On May 14, 1999, 10 leatherback turtles were signted during an aerial survey over approximately 15 nm (28 km) trackline, beginning at approximately 33°23' N. lat., 079°07' W. long. (offshore Pawleys Island, SC) and ending at approximately 33°35' N. lat., 078°57' W. long. (offshore Surfside Beach, SC). A repeated survey along the same trackline documented 12 leatherbacks on May 18, 1999.

On May 21, 1999, NMFS issued a temporary rule closing inshore and offshore waters from shore out to 10 nm (18.5 km) between 33° N. lat. and 34° N. lat., unless shrimp trawlers use TEDs with escape openings modified to exclude leatherback turtles (64 FR 28761, May 27, 1999). This closed area is generally from Cape Romain, South Carolina, to Wilmington Beach, North Carolina. This closure was to expire at 11:59 a.m. June 4, 1999.

On May 26, 1999, an aerial survey conducted by the South Carolina Department of Natural Resources documented continued concentrations of leatherback sea turtles between Cape Island and Murrells Inlet. A total of 15 leatherback sea turtles were concentrated in a 44 nm (81.4 km) area. Therefore, the Assistant Administrator for Fisheries, NOAA (AA), is closing all inshore waters and offshore waters within 10 nm (18.5 km) seaward of the COLREGS demarcation line, bounded by 33° N. lat. and 34° N. lat., within the leatherback conservation zone to fishing by shrimp trawlers required to have a TED installed in each net that is rigged for fishing, unless the TED installed has an escape opening large enough to exclude leatherback turtles, meeting the specifications at 50 CFR 223.207(a)(7)(ii)(B) or 223.207(c)(1)(iv)(B). These regulations specify modifications that can be made to either single-grid hard TEDs or Parker soft TEDs to allow leatherbacks to escape. The boundaries of this closed zone correspond to those of shrimp fishery statistical zone 33.

This action does not affect the current closure in zone 32. High concentrations of leatherback sea turtles were not documented in the May 26 survey, and, therefore, the closure in zone 32 will expire at 11:59 p.m. on May 28, 1999.

NMFS will continue to monitor the presence of leatherback sea turtles along the Georgia and South Carolina coasts through weekly aerial surveys. Continued high abundance of leatherbacks greater than 10 turtles per 50 nm (92.6 km) of trackline will require further agency action, as per 50 CFR 223.206(d)(2)(iv)(B). If leatherback sightings fall to 5 or fewer turtles per 50 nm (92.6 km) of trackline, then the aerial surveys of the closed area will be replicated within 24 hours, or as soon as practicable thereafter. If sighting rates of 5 or fewer leatherbacks per 50 nm (92.6 km) are reconfirmed, the AA may withdraw or modify the closure that is the subject of this rule, as per 50 CFR 223.206(d)(4)(ii). NMFS will consult with the appropriate state natural resource officials in the closed area in making a determination to withdraw or

modify this closure, as per 50 CFR 223.206(d)(4)(iv). Fishermen should monitor NOAA weather radio for announcements.

The regulations at 50 CFR 223.206(d)(2)(iv) state that fishermen operating in the closed area with TEDs modified to exclude leatherback turtles must notify the NMFS Southeast Regional Administrator of their intentions to fish in the closed area. This aspect of the regulations does not have a current Office of Management and Budget control number, issued pursuant to the Paperwork Reduction Act. Consequently, fishermen are not required to notify the Regional Administrator prior to fishing in the closed area, but they must still meet the gear requirements.

The additional closure has been announced on the NOAA weather channel, in newspapers, and other media. Shrimp trawlers may also call Charles Oravetz (see FURTHER INFORMATION CONTACT) for updated area closure information.

Classification

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

The AA is taking this action in accordance with the requirements of 50 CFR 223.206(d)(2)(iv) to provide emergency protection for endangered leatherback sea turtles from incidental capture and drowning in shrimp trawls. Leatherback sea turtles are occurring in high concentrations in coastal waters in shrimp fishery statistical zone 32. This action allows shrimp fishing to continue in the affected area and informs fishermen of the gear changes that they can make to protect leatherback sea turtles.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds that there is good cause to waive prior notice and opportunity to comment on this action. It would be contrary to the public interest to provide prior notice and opportunity for comment because providing notice and comment would prevent the agency from implementing the necessary action in a timely manner to protect the endangered leatherback. Furthermore, notice and opportunity to comment on this action was provided through the proposed rule establishing these actions (60 FR 25663, May 12, 1995). For these reasons, good cause exists under 5 U.S.C. 553(d)(3) not to delay the effective date of this rule for 30 days. As stated above, the additional closure has been announced on the NOAA weather radio, in newspapers, and other media, allowing time for the shrimp fishery to comply with this rule.

As prior notice and an opportunity for public comment are not required to be provided for this notification by 5 U.S.C. 553, or by any other law, the analytical requirements of 5 U.S.C. 601 *et seq.* are inapplicable.

The AA prepared an Environmental Assessment (EA) for the final rule requiring TED use in shrimp trawls and the regulatory framework for the Leatherback Conservation Zone (60 FR 47713, September 14, 1995). Copies of the EA are available (see **ADDRESSES**).

Dated: May 28, 1999.

William W. Fox, Jr.

National Marine Fisheries Service, Acting Assistant Administrator for Fisheries.

[FR Doc. 99–14056 Filed 5–28–99; 4:31 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 285 and 635

[Docket No. 990217050–9147–02; I.D. 010799A]

RIN 0648–AM17

Atlantic Highly Migratory Species (HMS) Fisheries; Atlantic Bluefin Tuna 1999 Quota and Effort Control Specifications

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

ACTION: Final specifications.

SUMMARY: NMFS announces specifications to set the 1999 Atlantic bluefin tuna (BFT) fishing category quotas and General category effort controls. These specifications are necessary to implement the 1998 recommendation of the International Commission for the Conservation of Atlantic Tunas (ICCAT) required by the Atlantic Tunas Convention Act (ATCA) and to achieve domestic management objectives.

DATES: The final specifications are effective June 1, 1999, through May 31, 2000.

ADDRESSES: Copies of supporting documents, including the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), are available from the Highly Migratory Species Management Division, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Brad McHale or Sarah McLaughlin at 978-281-9260.

SUPPLEMENTARY INFORMATION: Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and ATCA. The authority to issue regulations has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA). Within NMFS, daily responsibility for management of Atlantic HMS fisheries rests with the Office of Sustainable Fisheries, and is administered by the HMS Management Division.

ICCAT has identified the western stock of Atlantic BFT as overexploited and has recommended fishing quotas for the contracting parties. Based on the 1998 revised stock assessment, parties at the 1998 meeting of ICCAT adopted a 20-year west Atlantic BFT rebuilding program, beginning in 1999 and continuing through 2018. ICCAT has adopted an annual total allowable catch (TAC) of 2,500 metric tons whole weight (mt ww) of west Atlantic BFT inclusive of dead discards, to be applied annually until such time as the TAC is changed based on advice from the Standing Committee on Research and Statistics. Given the new stock assessment and rebuilding schedule, the annual landing quota allocated to the United States was increased by 43 mt ww to 1,387 mt ww.

Background information and rationale for these specifications were provided in the Bluefin Tuna Addendum to the draft HMS FMP and the final HMS FMP, and are not repeated here. The quota specifications allocate the landings quota among the several established fishing categories. The specifications are issued pursuant to interim provisions of § 635.25(c) of the consolidated HMS regulations (64 FR 29090, May 28, 1999) until June 30, 1999, and thereafter through May 31, 2000, pursuant to § 635.27(a) of the Atlantic HMS regulations. The General category effort controls are issued pursuant to § 285.24 of the Atlantic tunas regulations until June 30, 1999, and thereafter through May 31, 2000, pursuant to § 635.23(a) of the Atlantic HMS regulations.

Changes From the Proposed Specifications

Based on consideration of comments received during the comment period, NMFS has added 1 day per week (Mondays) to the proposed schedule of restricted fishing days (RFDs) in order to extend the General category fishery season.

Fishing Category Quotas

U.S. domestic quota allocations are based on the same percentages as the 1997 allocations, except that the Purse

Seine category is capped at its 1997/1998 quota of 250 mt ww. Based on these percentages, and quota adjustments based on overharvests or underharvests in the Angling, General, and Purse Seine categories in 1998, the adjusted quotas for the 1999 fishing year are as follows: 261 mt ww for the Angling category, including 99 mt ww for the school BFT subquota; 654 mt ww for the General category; 54 mt ww for the Harpoon category; 113 mt ww for the Longline category; 1 mt ww for the Trap category; 252 mt ww for the Purse Seine category; and 43 mt ww for the Reserve.

The Angling category quota is subdivided as follows: School BFT—99 mt ww, with 43 mt ww to the northern area, 38 mt ww to the southern area, and 18 mt ww held in reserve; large school/small medium BFT –- 156 mt ww, with 83 mt ww to the northern area and 73 mt ww to the southern area; large medium/giant BFT –- 6 mt ww, with 2 mt ww to the northern area and 4 mt ww to the southern area.

The Longline category is subdivided as follows: 89 mt ww to longline vessels operating south of 34° N, and 24 mt ww to longline vessels operating north of 34° N.

For 1999, NMFS implements General category quota subdivisions as established for 1998, as follows: 60 percent for June-August, 30 percent for September, and 10 percent for October-December. Given the carryover quota for the General category (1 mt ww), adjustments are necessary to allocate the carryover across the established subperiods. These percentages are applied only to the coastwide baseline quota for the General category of 644 mt ww, with the remaining 10 mt ww reserved for the New York Bight fishery. Thus, of the 644 mt ww baseline General category quota, 387 mt ww will be available in the period beginning June 1 and ending August 31, 193 mt ww will be available in the period beginning September 1 and ending September 30, and 64 mt ww will be available in the period beginning October 1 and ending December 31.

The New York Bight set-aside area is the area comprising the waters south and west of a straight line originating at a point on the southern shore of Long Island at 72°27' W (Shinnecock Inlet) and running SSE 150° true, and north of 38°47' N. When the coastwide General category fishery has been closed in any quota period, NMFS may publish notification in the **Federal Register** to make available up to 10 mt ww of the quota set aside for the New York Bight area. The daily catch limit for the set-aside area will be one large medium or giant BFT per vessel per day. Upon the effective date of the set-aside fishery, fishing for, retaining, or landing large medium or giant BFT is authorized only within the set-aside area. Any portion of the set-aside amount not harvested prior to the reopening of the coastwide General category fishery in the subsequent quota period may be carried over for the purpose of renewing the set-aside fishery at a later date.

Attainment of the subquota in any quota period will result in a closure until the beginning of the following quota period. The subquota for the following quota period will be adjusted by any underharvest or overharvest in the previous quota period. Announcements of closures will be filed for publication with the Office of the Federal Register, stating the effective date of closure, and will be disseminated by the Highly Migratory Species (HMS) Fax Network, the Atlantic Tunas Information Line, NOAA weather radio, and Coast Guard Notice to Mariners. Although notification of closure will be provided as far in advance as possible, fishermen are encouraged to call the Atlantic Tunas Information Line (978–281-9305 or 888–USA-TUNA) to check the status of the fishery before leaving for a fishing trip.

Restricted-Fishing Days

Persons aboard vessels permitted in the General category are prohibited from fishing (including tag and release fishing) for BFT of all sizes on the following days in 1999: July 7, 11, 12, 14, 18, 19, 21, 25, 26, and 28; August 1, 2, 4, 8, 9, 10, 11, 12, 15, 16, 18, 22, 23, 25, 29, and 30; September 1, 5, 6, 8, 12, 13, 15, 19, 20, 22, 26, 27 and 29; and October 1. Persons aboard vessels permitted in the Atlantic Tunas Charter/Headboat category are prohibited from fishing for large medium and giant BFT under the General category quota on the indicated RFDs. These RFDs will improve distribution of fishing opportunities without increasing BFT mortality.

Comments and Responses

NMFS received numerous comments regarding BFT quota allocation and General category effort controls. NMFS addressed quota allocation comments in the final rule to implement the HMS FMP.

General Category Quota Subdivision

Comment: NMFS received some comments in support of the status quo General category time-period subquotas (three periods), and some suggesting alternate schedules, including: NMFS should implement two General category time-period subquotas (e.g., for June through September and October through December) since prices are higher in August than September, and in order to avoid derby conditions in October.

Response: NMFS has considered these comments and believes that a General category season divided into three time-period subquotas, as proposed, best meets the concerns of the fishing industry, as well as the fishery management objective of maximizing fishing opportunities. A season divided into two time-period subquotas as some suggested (June through September and October through December) could result in the General category fishery being closed for the entire month of September. This would reduce fishing opportunities, as the fishery would be closed during a time when bluefin tuna are available throughout New England. In addition, catch per unit effort (CPUE) information has traditionally been collected from the General category fishery during September, and if the fishery were to be closed during this time period, the continuous time-series of CPUE data could be lost.

Restricted-fishing days

Comment: NMFS received numerous comments regarding RFDs, some of which support the status quo, some of which oppose RFDs altogether, and some suggesting alternate schedules, including: in order to extend the General category season, NMFS should implement more RFDs than proposed, e.g., 3 days or more per week (Sundays, Wednesdays, and Fridays or Sundays, Mondays, and Wednesdays) in addition to the days that correspond to Japanese market closures, and should begin the schedule of RFDs for 1999 in early July.

Response: NMFS has considered these comments and agrees additional General category RFDs may increase the likelihood that fishing would continue throughout the summer and fall, and would further distribute fishing opportunities without increasing bluefin mortality. NMFS has added Mondays to the schedule of RFDs.

Classification

These final specifications are published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and the Atlantic Tunas Convention Act, 16 U.S.C. 971 *et seq.* The AA has determined that these specifications are necessary to implement the recommendations of ICCAT and are necessary for the management of the Atlantic tuna fisheries.

The Chief Counsel for Regulation of the Department of Commerce certified

to the Chief Counsel for Advocacy of the Small Business Administration that the proposed specifications would not have a significant economic impact on a substantial number of small entities. No comments were received that would alter the basis for this determination. Given the certification, an initial regulatory flexibility analysis was not prepared for the proposed specifications. However, irrespective of the certification, a final regulatory flexibility analysis was prepared for the HMS FMP, which also contains an analysis of General category effort controls. A summary of that analysis may be found in the HMS FMP available from NMFS (see **ADDRESSES**).

These quota and effort control specifications impose no requirements with which fishermen will have to come into compliance, and are necessary to help ensure that the U.S. actions are consistent with its international obligations at ICCAT. Therefore, NMFS has determined that there is good cause to waive partially the 30-day delay in the effective date normally required by 5 U.S.C. 553(d). NMFS will rapidly communicate these final specifications through the FAX network.

These final specifications have been determined to be not significant for purposes of E.O. 12866.

Dated: May 28, 1999.

William W. Fox,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–14054 Filed 5–28–99; 4:31 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 981231333–9127–03; I.D. 052799E]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Whiting Closure for the Mothership Sector

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

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces closure of the 1999 mothership fishery for whiting at 2100 local time (l.t.) June 2, 1999, because the allocation for the mothership sector is projected to be reached by that time. This action is intended to keep the harvest of whiting at the 1999 allocation levels.

DATES: Effective from 2100 l.t. June 2, 1999, until the start of the 2000 primary season for the mothership sector, unless modified, superseded or rescinded; such action will be published in the **Federal Register**. Comments will be accepted through June 18, 1999.

ADDRESSES: Submit comments to William Stelle, Jr., Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; or Rodney R. McInnis, Acting Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Katherine King at 206–526–6145 or Becky Renko at 206–526–6110.

SUPPLEMENTARY INFORMATION: This action is authorized by regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP), which governs the groundfish fishery off Washington, Oregon, and California. On January 8, 1999 (64 FR 1316), regulations were published announcing the 1999 fishing seasons for Pacific whiting. A new whiting stock assessment was completed in early 1999, and an allowable biological catch (ABC) and optimum yield (OY) of 232,000 metric tons (mt) were recommended for all U.S. harvests. On May 24, 1999, (64 FR 27928), NMFS announced the 1999 whiting ABC and OY, the tribal whiting allocation of 32,500 mt, and the commercial OY of 199,500 mt.

Regulations at 50 CFR 660.323(a)(4) divide the commercial allocation into separate allocations for the catcher/processor, mothership, and shore-based sectors of the whiting fishery. When each sector's allocation is reached, the primary season for that sector is ended. The catcher/processor sector is composed of vessels that harvest and process whiting. The mothership sector is composed of motherships, and catcher vessels that harvest whiting for delivery to motherships. Motherships are vessels that process, but do not harvest, whiting. The shoreside sector is composed of vessels that harvest whiting for delivery to shore-based processors. The regulations at 50 CFR 600.323 (a)(3)(i) describe the primary season for vessels delivering to motherships as the period(s) when at-sea processing is allowed and the fishery is open for the mothership sector. The 1999 allocations, which are based on the 1999 commercial OY for whiting of 199,500 mt are 67,800 mt (34 percent) for the catcher/processor sector, 47,900 mt (24 percent) for the mothership sector, and 83,800 mt (42 percent) for the shoreside sector.

NMFS Action

This action announces achievement of the allocation for the mothership sector only. The best available information on May 31, 1999, indicated that the 47,900–mt mothership allocation would be reached by 2100 hours, June 2, 1999, at which time the primary season for the mothership sector ends and further at-sea processing and receipt of whiting by a mothership, or taking and retaining, possessing, or landing of whiting by a catcher boat in the mothership sector, are prohibited. For the reasons stated above, and in accordance with the regulations at 50 CFR 660.323(a)(4)(iii)(B), NMFS herein announces that effective 2100 hours June 2, 1999—(1) further receiving or at-sea processing of whiting by a mothership is prohibited. No additional unprocessed whiting may be brought on board after at-sea processing is prohibited, but a mothership may continue to process whiting that was on board before at-sea processing was prohibited, and (2) whiting may not be taken and retained, possessed, or landed by a catcher vessel participating in the mothership sector.

Classification

This action is authorized by the regulations implementing the FMP. The determination to take this action is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Regional Administrator (see **ADDRESSES**) during business hours. This action is taken under the authority of 50 CFR 660.323(a)(4)(iii)(B) and is exempt from review under E.O. 12866.

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

Dated: May 28, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–14055 Filed 5–28–99; 4:31 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961107312–7021–02; I.D. 052499E]

Fisheries of the Exclusive Economic Zone Off Alaska; Bycatch Rate Standards for the Second Half of 1999

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

ACTION: Pacific halibut and red king crab bycatch rate standards; request for comments.

SUMMARY: NMFS announces Pacific halibut and red king crab bycatch rate standards for the second half of 1999. Regulations that implement the vessel incentive program require publication of these bycatch rate standards for trawl vessel operators who participate in the Alaska groundfish trawl fisheries. The intent of this action is to reduce prohibited species bycatch rates and promote conservation of groundfish and other fishery resources.

DATES: Effective 1201 hours, Alaska local time (A.l.t.), July 1, 1999, through 2400 hours, A.l.t., December 31, 1999. Comments on this action must be received at the following address no later than 4:30 p.m., A.l.t., June 28, 1999.

ADDRESSES: Comments should be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel; or be delivered to 709 West 9th Street, Federal Building, Room 401, Juneau, AK.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION:

NMFS manages the domestic groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) and Gulf of Alaska (GOA) according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act and are implemented by regulations governing the U.S. groundfish fisheries at 50 CFR part 679.

Regulations at § 679.21(f) implement a vessel incentive program to reduce halibut and red king crab bycatch rates in the groundfish trawl fisheries. Under the incentive program, operators of trawl vessels may not exceed Pacific halibut bycatch rate standards specified for the BSAI and GOA midwater pollock and ''other trawl'' fisheries, and the BSAI yellowfin sole and ''bottom pollock'' fisheries. Vessel operators also may not exceed red king crab bycatch standards specified for the BSAI yellowfin sole and ''other trawl'' fisheries in Bycatch Limitation Zone 1 (defined in § 679.2). The fisheries included under the incentive program are defined in regulations at § 679.21(f)(2).

Regulations at § 679.21(f)(3) require that halibut and red king crab bycatch rate standards for each fishery included under the incentive program be published in the **Federal Register**. The standards are in effect for specified seasons within the 6-month periods of January 1 through June 30, and July 1 through December 31. For purposes of calculating vessel bycatch rates under the incentive program, 1999 fishing months were specified in the **Federal Register** on November 25, 1998 (63 FR 65129).

Halibut and red king crab bycatch rate standards for the first half of 1999 also were published in the **Federal Register** (63 FR 65129, November 25, 1998). As required by § 679.21(f)(3) and (4), the Administrator of the Alaska Region, NMFS (Regional Administrator), has established the bycatch rate standards for the second half of 1999 (July 1 through December 31). These standards were endorsed by the Council at its April 1999 meeting and are set out in Table 1. As required by § 679.21(f)(4), bycatch rate standards are based on the following information:

(A) Previous years' average observed bycatch rates;

(B) Immediately preceding season's average observed bycatch rates;

(C) The bycatch allowances and associated fishery closures specified under §§ 679.20 and 679.21;

(D) Anticipated groundfish harvests;

(E) Anticipated seasonal distribution of fishing effort for groundfish; and

(F) Other information and criteria deemed relevant by the Regional Administrator.

TABLE 1— BYCATCH RATE STANDARDS BY FISHERY FOR THE SECOND HALF OF 1999 FOR PURPOSES OF THE VESSEL INCENTIVE PROGRAM IN THE BSAI AND GOA

(Halibut bycatch rate standards kilograms (kg) of halibut/metric ton (mt) of groundfish catch)

Fishery	1999 bycatch rate standard
BSAI Midwater pollock	1.0
BSAI Bottom pollock	5.0
BSAI Yellowfin sole	5.0
BSAI Other trawl	30.0
GOA Midwater pollock	1.0
GOA Other trawl	40.0
Zone 1 red king crab bycatch rate standards (number of crabs/mt of groundfish catch)	
BSAI yellowfin sole	2.5
BSAI Other trawl	2.5

Bycatch Rate Standards for Pacific Halibut

The halibut bycatch rate standards for the 1999 trawl fisheries are unchanged from those implemented in 1998. The Regional Administrator based standards for the second half of 1999 on anticipated seasonal fishing effort for groundfish species and on 1994–1998 halibut bycatch rates observed in the trawl fisheries included under the incentive program. In determining these bycatch rate standards, the Regional Administrator considered the annual and seasonal bycatch specifications for the BSAI and GOA trawl fisheries (64 FR 12103, March 11, 1999, and 64 FR 12094, March 11, 1999, respectively). He further recognized that directed fishing for Pacific cod for the inshore

component in the Western and Central Regulatory Areas of the GOA is closed for the remainder of the year. The GOA shallow-water and deep-water trawl fishery species complexes will reopen on July 4 when the third seasonal apportionment of the halibut bycatch limit established for the GOA trawl fisheries becomes available. In the Bering Sea, the rockfish and rock sole/flathead sole/other flatfish fishery categories will open or reopen on July 4 when seasonal apportionments of halibut bycatch allowances specified for these fisheries become available. The BSAI Pacific cod trawl fishery is closed for the remainder of the year. The BSAI yellowfin sole fishery is ongoing, and no closure has yet been projected due to crab or halibut bycatch. The Regional Administrator also considered the August 1 opening date of the 1999 Bering Sea pollock ''B'' season (§ 679.23(e)(2)) and the Gulf of Alaska third and fourth season pollock fisheries (§ 679.23(d)(2)). The halibut bycatch rate standards for the BSAI yellowfin sole and ''bottom pollock'' trawl fisheries are each set at 5 kg of halibut per metric ton (mt) of groundfish. These standards approximate the average annual rates observed on trawl vessels participating in these fisheries since 1992. The halibut bycatch rate standard for the BSAI and GOA midwater pollock fisheries (1 kg of halibut/mt of groundfish) is higher than the bycatch rates normally experienced by vessels participating in these fisheries. This standard is intended to encourage vessel operators to maintain off-bottom trawl operations and limit further bycatch of halibut in the pollock fishery when halibut bycatch restrictions at § 679.21 prohibit directed fishing for pollock by vessels using non-pelagic trawl gear. A bycatch rate standard of 30 kg halibut/mt of groundfish is established for the BSAI ''other trawl'' fishery. This standard has remained unchanged since 1992. A bycatch rate standard of 40 kg of halibut/mt of groundfish is established for the GOA ''other trawl'' fishery, which is unchanged since 1994. The considerations that support these bycatch rate standards for the ''other trawl'' fisheries are unchanged from previous years and are discussed in the **Federal Register** publications of 1995 bycatch rate standards (60 FR 2905, January 12, 1995, and 60 FR 27425, May 24, 1995). Observer data collected from the 1998 GOA ''other trawl'' fishery show average third and fourth quarter halibut bycatch rates of 38 and 58 kg of halibut/mt of groundfish, respectively. The first quarter rate from 1999 was lower, at 32 kg of halibut/mt of groundfish. Observer data from the 1998 BSAI ''other trawl'' fishery show third and fourth quarter halibut bycatch rates of 12 kg of halibut/mt of groundfish. The first quarter rate from the 1999 BSAI ''other trawl'' fishery was 14 kg of halibut/mt of groundfish.

Bycatch Rate Standards for Red King Crab

The red king crab bycatch rate standard for the yellowfin sole and ''other trawl'' fisheries in Zone 1 of the Bering Sea subarea is 2.5 crab/mt of groundfish during the second half of 1999. This standard has remained unchanged since 1992. Through May 8, 1999, the rock sole/flathead sole/other flatfish fishery category had taken 60 percent of its annual red king crab bycatch allowance. The Pacific cod and yellowfin sole fisheries have taken 51 percent and 4 percent, respectively, of their bycatch allowances. The Regional Administrator anticipates that the non-pelagic trawl gear closure of the red king crab savings area in Zone 1 will continue to result in low red king crab bycatch rates for the remainder of the year and is maintaining the 2.5 red king crab/mt of groundfish bycatch rate standard.

The Regional Administrator has determined that Council recommendations for bycatch rate standards are appropriately based on the information and considerations necessary for such determinations under § 679.21(f). Therefore, the Regional Administrator concurs in the Council's determinations and recommendations for halibut and red king crab bycatch rate standards for the second half of 1999, as set forth in Table 1. These bycatch rate standards may be revised and published in the **Federal Register** when deemed appropriate by the Regional Administrator, pending his consideration of the information set forth at § 679.21(f)(4).

Classification

This action is taken under 50 CFR 679.21(f) and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.* and 3631 *et seq.*

Dated: May 27, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–14044 Filed 5–28–99; 4:31 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 106
Thursday, June 3, 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 ENERGY

10 CFR Part 850

[Docket No. EH–RM–98–BRYLM]

RIN 1901–AA75

Chronic Beryllium Disease Prevention Program

AGENCY: Office of Environment, Safety and Health, Department of Energy.

ACTION: Proposed Rule; Notice of limited reopening of the comment period; request for public comment.

SUMMARY: The Department of Energy (DOE) reopens the comment period for 30 days, in order to solicit public comments on options that DOE is considering for criteria to be used for the release or transfer of equipment and other items previously used in DOE beryllium operations, either to other DOE facilities or to the public.

DATES: Written comments on the issues presented in this notice must be received by the Department on or before July 6, 1999.

ADDRESSES: Written comments should be addressed to: Jacqueline D. Rogers, Office of Environment, Safety and Health (EH–51), Docket No. EH–RM–98–BRYLM, U.S. Department of Energy, 1000 Independence Ave., S.W., Washington, DC 20585. Public comments submitted in response to DOE's Notice of Proposed Rulemaking, some of which addressed the subject of this notice, may be read and copied in DOE's Freedom of Information Reading Room, 1E–190, 1000 Independence Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jacqueline D. Rogers, Office of Environment, Safety and Health (EH–51), Docket No. EH–98–BRYLM, U.S. Department of Energy, 1000 Independence Ave., S.W., Washington, DC 20585, 301–903–5684.

SUPPLEMENTARY INFORMATION: On December 3, 1998, DOE published a Notice of Proposed Rulemaking (NOPR) in the **Federal Register** proposing regulations for a chronic beryllium disease prevention program to reduce the number of DOE Federal and contractor workers exposed to beryllium, minimize the levels of and potential for exposure to beryllium, and establish medical surveillance requirements to ensure early detection and treatment of disease. 63 FR 66940. This rulemaking is conducted pursuant to DOE's authority under section 161 of the Atomic Energy Act of 1954 (AEA) to prescribe such regulations as it deems necessary to govern any activity authorized by the AEA, including standards for the protection of health and minimization of danger to life or property. 42 U.S.C. 2201(i)(3) and (p).

I. Background on Release Criteria

DOE included in the NOPR several issues for public comment, including a request for information concerning appropriate criteria for the release or transfer of equipment and other items used in DOE beryllium activities to other DOE facilities for either beryllium or non-beryllium uses, or to the public for non-beryllium uses. 63 FR 66948. Equipment that has been used for beryllium work often retains residual contamination that could present an occupational or public health hazard if the beryllium becomes airborne. Before such equipment is sold or otherwise transferred to the public, or released for other DOE uses, steps must be taken to ensure that there are no potential health hazards to the receiver of the equipment.

DOE solicited views and information concerning whether DOE should develop a consistent approach or uniform criteria for the release of beryllium-related items at DOE facilities. Currently, the criteria vary among those DOE facilities that have established release criteria for equipment and other items used in beryllium work. For example, the Pantex facility in Texas has a surface contamination release criterion of less than or equal to 0.1 μg/100 cm^2; the Mound facility in Ohio uses a criterion of less than or equal to 0.3 μg/100 cm^2; and the Lawrence Livermore National Laboratory uses a criterion of less than or equal to 1 μg/100 cm^2. The Rocky Flats Environmental Technology Site in Colorado uses two levels of allowable surface contamination for items to be released, depending upon the receiver of the equipment. For equipment to be released to the public or to other DOE facilities where the equipment will not be used for beryllium work, the Rocky Flats criterion is less than 0.2 μg/100cm^2. For equipment released to other DOE facilities where the equipment will be used for beryllium work, the criterion is the lesser of the allowable level of the receiving facility, or less than or equal to 2.5 μg/100cm^2. The Rocky Flats process also compares the current value of the equipment to the cost of decontamination and the cost of disposal.

II. Public Comments on the NOPR

The request for comment in the NOPR yielded additional information and views on the subject of appropriate release criteria. The release levels recommended by commenters ranged from zero (The Consortium for Risk Evaluation with Stakeholder Participation) to 1 μg/100 cm^2 (Fluor-Daniel Hanford, Inc.). The Atomic Weapons Establishment (AWE) in the United Kingdom stated that AWE uses a release criterion of 1 μg/ft^2 (or about 0.1 μg/100cm^2). Lockheed Martin Energy Research Corporation commented that DOE should establish release limits to ensure consistency throughout the DOE complex, but did not recommend a specific release criterion.

Two commenters recommended establishing a single regulatory release level. The Navy Environmental Health Center recommended that the level be the same as the housekeeping surface contamination level. Fluor-Daniel Hanford, Inc., recommended that the same release criterion or level apply both to released equipment and to areas of a facility that are released or transferred to non-beryllium work or uses.

The University of California (UC) recommended a graded approach based on the nature of the item being released or the recipient. UC suggested that for ''consumer goods,'' such as desks, machine tools, and cabinets, the surface contamination level should be less than 0.2 μg/100 cm^2, and the items should be released only to a scrap metal or waste disposal company (with a release tag

notification). For items that have internal contamination but are easily cleaned on the outside, UC recommended a release level of 0.2 μg/100 cm^2 for use within DOE, if the items are labeled to warn of the potential for internal contamination. For items released for DOE use that are not easily sampled or are porous, UC recommended using a stabilizing material (e.g., paint) as a sealant, and a warning label to indicate that the equipment was previously used in a beryllium area. UC further recommended that if a graded approach is not included in the rule, then each site should be permitted to specify release criteria in its program.

Brush Wellman, Inc., expressed concern about using only a single surface contamination level to determine the releasability of an item to the public, because the swipe sampling method alone may not adequately characterize the potential exposure risk. For example, a piece of equipment released on the basis of a surface contamination criterion may contain beryllium dust in cracks and crevices that could be released during future maintenance.

The Consortium for Risk Evaluation with Stakeholder Participation (CRESP) commented that allowing the release of equipment or buildings with detectable levels of beryllium would pose a health risk to the recipient.

III. Options Being Considered by DOE

DOE has tentatively concluded that the final rule should contain requirements for the release of beryllium-related items at DOE facilities. Having preliminarily evaluated the comments submitted in response to the NOPR request for information, DOE now is considering specific release criteria within the range of recommendations presented by the comments already received, and would like public comment on the options and issues presented in this notice section.

A. Surface Contamination Release Level

The quantitative limit of detection for beryllium (using the OSHA ICP method) is 0.043 μg. This detection limit makes it possible to determine surface contamination as low as 0.04 μg/100 cm^2. However, surface contamination is only a cleanliness measure, and is not a predictor of health risk from beryllium contamination. Thus, the selection of an appropriate surface contamination release level depends on an assessment of health risk, feasibility, cost, and cleaning technology.

Because of the scientific uncertainty about what is a ''safe'' level of exposure to beryllium, DOE believes that any surface contamination release level selected should be as low as practicable. Most of the surface contamination levels established by DOE facilities and those recommended by public commenters for release of items used in beryllium areas to the public are in the range of 0.1 μg/100 cm^2 to 0.3 μg/100 cm^2. The comment by the AWE that it reduced the housekeeping surface action level in its Cardiff, Wales facility to 1 μg/ ft^2 (about 0.1 μg/100 cm^2) in 1990 suggests that a public release level as low as 0.1 μg/100 cm^2 is achievable, and therefore, could be a reasonable criterion for release of an item to the public.

DOE is not inclined to agree with the comment that any detectable level of beryllium on the surface of an item should be presumed to present a health risk to the public and, therefore, that no item having a detectable level of beryllium should be released. There is no established correlation between surface beryllium levels and airborne concentrations of beryllium that would pose a health hazard. As OSHA pointed out in the OSHA Technical Manual Section II, Chapter 2 ''Sampling for Surface Contamination,'' ''[surface] sampling is not attempting to assess the health risk resulting from the contamination. Rather, it is to ensure that the cleaning and decontamination regimen is being effectively implemented. . . . Establishing an acceptable contamination limit will depend on the purpose of cleaning, and what is feasible for the procedures utilized.''

B. Conditions on Release of Items

The University of California (UC) recommended placing certain conditions on release based on the nature of the item or user. For example, ''consumer goods'' (e.g., desks, machine tools, cabinets) meeting a specified surface contamination level would, under UC's suggested approach, only be released to a scrap metal or waste disposal company. On the other hand, UC suggested allowing items to be released for use within a DOE facility if the item could be easily cleaned on the outside and it was labeled to warn of the potential for internal beryllium contamination.

DOE is considering establishing separate surface contamination levels for release to the public for non-beryllium use, and release to DOE facilities for beryllium or non-beryllium uses. DOE will consider this matter in the light of public comments, and invites suggestions for appropriate conditions on the release of items to the public, or to DOE facilities for non-beryllium uses.

C. Internal Beryllium Dust or Other Contamination

As noted, surface sampling is not an adequate means of characterizing potential exposure risk. For example, a lathe or other piece of equipment released because it is determined to be beryllium-free on the surface may contain internal beryllium dust that could become airborne, and therefore present a health hazard, during future maintenance. On the other hand, other types of equipment may contain internal beryllium that is combined with other substances (e.g., grease) to make it unlikely that the beryllium would ever become airborne. The presence of this type of entrained contamination, even at levels above the otherwise applicable release criteria, would not present a health hazard. DOE invites comment on how the final rule should address such entrained contamination.

DOE's tentative view is that the final rule should permit the release of items to the public for non-beryllium uses, or to DOE facilities for either beryllium or non-beryllium uses, taking all of these factors into consideration. For example, the final rule might specify that items may be released for non-beryllium use if they contain a beryllium contamination level less than or equal to 0.1 μg/100 cm^2 on surfaces accessible through operation or maintenance activities. Under this approach, the item would need to be disassembled as necessary and cleaned to meet the release surface contamination level. If cleaning is not practicable (e.g., too costly), the item would be disposed of as waste under this approach.

D. Release to Another Facility for Beryllium Work

The Rocky Flats Environmental Technology Site has established a surface contamination release level of 0.2 μg/100 cm^2 for release of an item to the public or to a DOE facility for non-beryllium work, and a release level of 2.5 μg/100cm^2 for an item to be transferred to another DOE facility for beryllium work. DOE believes it may be prudent to establish a higher surface contamination release level for items to be transferred to another DOE facility for beryllium work than is allowed for items released to the public or for use in DOE non-beryllium work. DOE also is inclined to adopt in the final rule the release level of 3μg/100 cm^2 as the surface contamination release level for equipment and other items that are

transferred to a DOE facility for beryllium work.[1]

DOE invites public comment on this approach and on other appropriate release criteria for beryllium-contaminated items transferred to a DOE facility for beryllium work.

IV. Public Comment.

DOE invites interested persons to submit written comments on the options presented in Section III above, and issues related to release criteria for items used in DOE beryllium activities.

Issued in Washington, DC on May 27, 1999.

David Michaels,

Assistant Secretary for Environment, Safety and Health, Department of Energy.

[FR Doc. 99–14077 Filed 6–2–99; 8:45 am]

BILLING CODE 6450–01–P

[1] 3 μg/100 cm² is essentially equivalent to the Rocky Flats criteria of 2.5 μg/100 cm², after allowing for the variability of surface sampling.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Accounting, Auditing, and Bookkeeping Services

AGENCY: Small Business Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: With the recent consolidations of the largest firms in the accounting, auditing, and bookkeeping services industry and their expansion into providing services of other industries, the Small Business Administration (SBA) has undertaken a review of its small business size standard for this industry. To supplement its review of this industry's size standard, SBA is requesting public comment as to what factors should be considered in establishing a definition of a small accounting, auditing, and bookkeeping services firm, what the public's views on several developments within the accounting industry are, whether the current size standard should be changed, and what the actual definition should be. Should SBA decide that a change is warranted, it would publish a proposed size standard in the **Federal Register** and seek public comment on a specific size standard before any change in the size standard is put into effect.

DATES: Submit comments on or before July 6, 1999.

ADDRESSES: Send comments to: Gary M. Jackson, Assistant Administrator for Size Standards, Small Business Administration, 409 Third St., SW, Mail Code: 6880, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Harvey Bronstein, Office of Size Standards, (202) 205–6618.

SUPPLEMENTARY INFORMATION: Size standards are numerical indicators to define what is a small business. They have been established to determine eligibility for firms for SBA and other Federal small business programs, such as loan guarantees, Government contracting assistance, minority enterprise development, and small disadvantaged business preferences. Currently, SBA defines a firm in the accounting industry (Standard Industrial Classification (SIC) 8721) as small if it has $6 million or less in average annual receipts, including any affiliates. By comparison, SBA uses $5 million as a size standard for most service industries. Other illustrative size standards in business and professional services include $18 million for computer services, $9 million for security guard services, and $2.5 million for architectural and engineering services. A list of the SBA size standards by industry category is available in 13 CFR 121.201, or on SBA's Internet web site (http://www.sba.gov/regulations/siccodes).

SBA bases its size standards on an analysis of an industry's economic structure and other information describing the relative standing of smaller businesses within an industry. SBA generally looks at factors such as average firm size, start-up costs, degree of competition, distribution of sales by firm size, and the objectives of SBA's programs. Other factors that may have an impact on the position of small businesses in an industry may also be considered, such as technological change, growth trends, and comparison with size standards in similar industries. By examining quantitative indicators for these factors from generally available sources of industry data, SBA is able to identify a small business segment within an industry and maintain a degree of comparability among size standards in different industries.

A review of data on the accounting industry and discussions with industry associations and accounting firms indicates a need for additional information on several issues before SBA can decide whether to propose a change to the current accounting size standard. Several issues are discussed below that have come to our attention that we believe merit a request for comments from the public. Other information the public believes is relevant to the question of an appropriate accounting size standard is also welcomed for our consideration.

One issue we specifically seek comments on concerns the available industry data on the accounting industry. According to data from the U.S. Bureau of the Census' 1992 Economic Census, of the 76,000 businesses in that industry, more than 99 percent are considered small businesses under the present size standard and they cumulatively obtained 60 percent of total industry revenues. Approximately 450 firms exceed the present size standard, and the top four firms with the largest operations in accounting obtain 19 percent of industry revenues. We are concerned that the recent changes in the industry are not fully reflected in the Census Bureau's data and other data sources. Thus, we are interested in the public's view on the changing nature of the industry since the early 1990s, and whether data from 1992 adequately characterizes the industry today. If not, the public should address what changes have occurred to alter the makeup of the industry, what data exists to verify and gauge the extent of these changes, and how these changes should affect the size standard.

Another issue concerns a prominent trend that is affecting the accounting industry—the expansion of services being offered by many of the larger firms. Some firms, especially the largest ones (often referred to as the ''Big 5''), which at one time primarily provided accounting services, have been diversifying into other areas of business and professional services such as management and economic consulting, information technology, computer systems integration, public relations, and legal services. Thus, while some of these firms originally offered only accounting services, they now offer a range of other business and professional services while still maintaining a considerable accounting and auditing capability. We are interested to know whether this trend is also occurring for small firms, and how it may affect the current size standard.

The SBA programs and other Federal programs which seem to be most affected by the accounting size standard are those that accord preference for Federal contracts, that is, the small business set-aside, 8(a), and small disadvantaged business programs. Federal contract award data supplied by the General Services Administration's Federal Procurement Data System indicate that small businesses have a substantial share of Federal accounting

contracts, capturing close to one-half of about $115 million worth of contracts in both fiscal years 1996 and 1997. We have received information from accounting industry groups concerned about the procurement preference programs and the relationship of these programs to the accounting size standard. Some believe that the $6 million size standard is too limiting in terms of allowing firms they believe to be small accounting firms to access larger Federal contracts. The issue, then, is whether firms above the present size standard should become designated as small businesses because they have difficulty competing against the largest firms in the industry for Federal contracts. Thus, we also seek comments on whether some or all ''mid-sized'' firms (those larger than SBA's $6 million size standard but smaller than the ''Big 5'') are at a competitive disadvantage with the largest firms in the industry for Federal contracts. If so, please comment on whether an increase to the size standard to include some mid-sized firms as small businesses would be helpful.

There also has been concern expressed that the largest accounting firms are receiving large-sized Federal contracts to the detriment of small- and mid-sized firms. In particular, we are told, accounting and auditing services are combined or bundled with other types of business, management, or financial services into larger contracts. When contract requirements in more than one industry are grouped together, this is known as contract bundling. These bundled contracts tend to limit opportunities for small businesses since the combined requirements become too large of a contract for a small business to handle. Yet, a small business could capably perform on one or a few requirements if they were separate and smaller contracts. We are interested in finding out the extent that accounting services are being bundled with other business and professional services to form large-sized contracts which are out of the reach of small- and mid-sized businesses. Also, if such practice is extensive, the public should comment on whether it should influence the level of the size standard for accounting.

Note: SBA has issued a proposed rule to define contract bundling (64 FR 2153) and its intent to determine the impact on small business of bundled contracts with expected value of $5 million or more.

In addition to these issues, comments on other issues concerning the accounting industry and the size standard that would be helpful to SBA include:

- Recent changes in the structure of the accounting industry;
- Competitiveness of small accounting businesses versus the largest or ''Big 5'' accounting firms;
- Growth of accounting firms;
- The role of and problems affecting ''mid-sized'' firms in the industry and how they may differ from small businesses; and
- Whether firms approaching the $6 million size standard are disadvantaged because of their size and if so, how?

The purpose of this advance notice is to obtain additional information on the accounting, auditing, and bookkeeping services industry to assist us in deciding whether a sufficient basis exists to propose a different size standard or to retain the current size standard. If we decide to propose a change to the size standard, this notice would be followed by a proposed rule published in the **Federal Register** indicating a specific new size standard. After evaluating public comment on a proposed size standard, a final rule would put into effect any new size standard.

Dated: May 17, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–14012 Filed 6–2–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–72–AD]

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 205A–1 and 205B Helicopters

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 Bell Helicopter Textron, Inc. (BHTI) Model 205A–1 and 205B helicopters. This proposal would require inspecting the vertical fin spar cap (spar cap) for cracking, corrosion, or disbonding, and modifying the vertical fin and replacing the left-hand spar cap. This proposal is prompted by 5 accidents involving helicopters of similar type design. The actions specified by the proposed AD are intended to detect fatigue cracking or corrosion on the spar cap, which could lead to failure of the vertical fin spar, loss of the tail rotor, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before August 2, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–72–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. 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 Bell Helicopter Textron, Inc., Inc., P.O. Box 482, Fort Worth, Texas 76101, telephone (817) 280–3391, fax (817) 280–6466. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Harry Edmiston, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5158, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to

Docket No. 98–SW–72–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, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–72–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

This document proposes the adoption of a new AD that is applicable to BHTI Model 205A–1 and 205B helicopters. This proposal would require:

—Visually inspecting the spar cap for any crack or disbonding;
—Inspecting the spar cap for any disbonding using a tap hammer;
—Modifying the vertical fin;
—After modifying the vertical fin, inspecting the spar cap for any cracks using a dye-penetrant inspection method; and
—Replacing the left-hand spar cap.

This proposal is prompted by 5 accidents involving helicopters of similar type design. The actions specified by the proposed AD are intended to detect fatigue cracking or corrosion on the spar cap, which could lead to failure of the vertical fin spar, loss of the tail rotor, and subsequent loss of control of the helicopter.

The FAA has reviewed the following alert service bulletins:

—BHTI Alert Service Bulletin (ASB) 205–98–70, Revision A, dated September 21, 1998, which is applicable to Model 205A–1 helicopters; and
—BHTI ASB 205B–98–26, Revision A, dated September 21, 1998, which is applicable to Model 205B helicopters.

Both describe procedures for inspecting the vertical fin spar for cracks or disbonding, and replacing the vertical fin spar cap if a crack or disbonding is found.

Since an unsafe condition has been identified that is likely to exist or develop on other BHTI Model 205A–1 and 205B helicopters of the same type design, the proposed AD would require:

—Visually inspecting the spar cap for any crack or disbonding;
—Inspecting the spar cap for any crack or disbonding using a tap hammer;
—Modifying the vertical fin;
—After modifying the vertical fin, inspecting the spar cap for any cracks using a dye-penetrant inspection method; and
—Replacing the left-hand spar cap.

The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 150 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per helicopter to accomplish the initial inspections, 0.5 work hour for the repetitive inspections, and 180 hours to replace the vertical fin spar assembly, and that the average labor rate is $60 per work hour. Required parts would cost approximately $300 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,705,500 to conduct the initial inspection and one repetitive inspection, and replace the vertical fin spar assembly on all the fleet.

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 a new airworthiness directive to read as follows:

Bell Helicopter Textron, Inc.: Docket No. 98–SW–72–AD.

Applicability: Model 205A–1 helicopters with vertical fin spar cap, part number (P/N) 212–030–447–001 or –101, installed, and Model 205B helicopters with vertical fin spar cap, P/N 212–030–447–101, installed, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the vertical fin (fin) spar, loss of the tail rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) For Model 205A–1 helicopters with a fin spar cap (spar cap), P/N 212–030–447–001, installed, accomplish the following:

(1) Within 8 hours time-in-service (TIS), modify the vertical fin and visually inspect the fin spar for cracks in accordance with Part I (A1), paragraphs 1 through 4 of Bell Helicopter Textron, Inc. Alert Service Bulletin No. 205–98–70, Revision A, dated September 21, 1998 (ASB).

(i) If a crack is discovered on the fin spar, replace the fin spar assembly with an airworthy fin spar assembly before further flight. Repair any corrosion or disbonding discovered during the inspection before further flight.

(ii) After inspecting, apply MIL–PRF–81352 clear lacquer or an equivalent coating to the area where the paint and primer were removed. Spray, brush, or wipe on a protective coat of MIL–C–16173, Grade 2, or equivalent compound, over the clear lacquer or equivalent coating.

(iii) Install the inspection door, intermediate gearbox cover, and tail rotor driveshaft cover.

(2) After initially modifying and inspecting the fin, inspect the fin spar for cracks at intervals not to exceed 8 hours TIS as follows:

(i) Accomplish Part I (A2), paragraphs 1 through 3 of the ASB.

(ii) If a crack is discovered on the fin spar, replace the fin spar cap or spar assembly with airworthy parts before further flight. Repair any corrosion or disbonding discovered during the inspection before further flight.

(iii) After inspecting, accomplish Part I (A2), paragraphs 5 and 6 of the ASB.

(3) Within 25 hours TIS, inspect and modify the fin assembly as follows:

(i) Accomplish Part II (C1), paragraph 1 of the ASB.

(ii) Remove the clip, part number (P/N) 212–030–099–091, and radius block, P/N 212–030–099–095, if existing. Remove the retainer, P/N 212–030–121–037, and sufficient rivets from the bottom row of the forward left-hand fin skin to allow trimming of the forward left-hand skin along the skin ''cutline'', approximately fin station 66.31 (see Figure 2 of the ASB).

(iii) Before drilling or reaming, inspect all holes in the spar cap where rivets were removed for short edge distance. If an existing edge distance will be less than 1.5 times the diameter of the drill or reamed hole, repairs must be performed and must be FAA approved before proceeding.

(iv) Accomplish Part II (C1), paragraphs 3, 4, and 6 in the ASB.

(v) If a crack is discovered on the fin spar, replace the fin spar cap or spar assembly with airworthy parts before further flight. Repair any corrosion or disbonding discovered during the inspection before further flight.

(vi) Accomplish Part II (C1), paragraphs 10 through 14 of the ASB.

(4) After initially modifying and dye-penetrant inspecting the fin spar, inspect the fin spar at intervals not to exceed 300 hours TIS as follows:

(i) Accomplish Part II (C2), paragraphs 1, 2, 3, 4, 5, and 7 of the ASB.

(ii) If a crack is discovered on the fin spar, replace the fin spar cap or spar assembly with airworthy parts before further flight. Repair any corrosion or disbonding discovered during the inspection before further flight.

(iii) Accomplish Part II (C2), paragraphs 11 through 14 of the ASB.

(5) Within 12 calendar months, remove the left-hand fin spar cap, P/N 212–030–447–001. Replace it with an airworthy fin spar cap or spar assembly configuration that has been demonstrated to the FAA to satisfy the structural fatigue requirements of repeated high-torque events and is approved by the Manager, Rotorcraft Standards Staff.

(6) Installation of a fin spar cap or assembly that has been approved by the Manager, Rotorcraft Standards Staff, constitutes terminating action for the requirements of this AD.

(b) For Model 205A–1, helicopters with a fin spar cap, P/N 212–030–447–101, installed, accomplish the following:

(1) Within 8 hours TIS, modify the vertical fin and visually inspect the fin spar for cracks in accordance with Part II (A1), paragraphs 1 through 5 of the ASB.

(i) If a crack is discovered on the fin spar, replace the fin spar cap or assembly with an airworthy parts before further flight. Repair any corrosion or disbonding discovered during the inspection before further flight.

(ii) After inspecting, apply MIL–PRF–81352 clear lacquer or an equivalent coating to the two lower rivet holes and on the surface where paint and primer were removed. Spray, brush, or wipe on a protective coat of MIL–C–16173, Grade 2 or equivalent compound, over the clear lacquer or equivalent coating. To facilitate subsequent inspections, do not replace the two lower rivets (see Figure 2 of the ASB).

(iii) Before drilling or reaming, inspect all holes in the spar cap where rivets were removed for short edge distance. If an existing edge distance will be less than 1.5 times the diameter of the drill or reamed hole, repairs must be performed and must be FAA approved before proceeding.

(iv) Fasten the forward left-hand fin skin and the retainer, P/N 212–030–121–037, to the spar assembly using Hi-Loks and blind rivets as specified in Figure 2 of the ASB. Reinstall the clip and radius block, if existing, that were removed in accordance with paragraph 2 of Part II (A1) of the ASB.

(v) Refinish the reworked area.

(vi) Install the inspection door, intermediate gearbox cover, and tail rotor driveshaft cover.

(2) After initially modifying and inspecting the fin, inspect the fin spar for cracks at intervals not to exceed 8 hours TIS as follows:

(i) Accomplish Part II (A2), paragraphs 1 through 3 of the ASB.

(ii) If a crack is discovered on the fin spar, replace the fin spar cap or assembly with airworthy parts before further flight. Repair any corrosion or disbonding discovered during the inspection before further flight.

(iii) After inspecting, accomplish Part II (A2), paragraphs 5 and 6, of the ASB.

(3) Within 25 hours TIS, modify and inspect the vertical fin as follows:

(i) Accomplish Part II (C1), paragraph 1 of the ASB.

(ii) Remove the clip, P/N 212–030–099–091, and radius block, P/N 212–030–099–095, if existing. Remove the retainer, P/N 212–030–121–037, and sufficient rivets from the bottom row of the forward left-hand fin skin to allow trimming of the forward left-hand fin skin along the skin ''cutline'', approximately fin station 66.31 (see Figure 2 of the ASB).

(iii) Before drilling or reaming, inspect all holes in the spar cap where rivets were removed for short edge distance. If an existing edge distance will be less than 1.5 times the diameter of the drill or reamed hole, repairs must be performed and must be FAA approved before proceeding.

(iv) Accomplish Part II (C1), paragraphs 3, 4, and 6 of the ASB.

(v) If a crack is discovered on the fin spar, replace the fin spar cap or assembly with airworthy parts before further flight. Repair any corrosion or disbonding discovered during the inspection before further flight.

(vi) Accomplish Part II (C1), paragraphs 10 through 14 of the ASB.

(4) After initially modifying and dye-penetrant inspecting the fin spar, inspect the fin spar at intervals not to exceed 300 hours TIS as follows:

(i) Accomplish Part II (C2), paragraphs 1 through 7 of the ASB.

(ii) If a crack is discovered on the fin spar, replace the fin spar cap or assembly with airworthy parts before further flight. Repair any corrosion or disbonding discovered during the inspection before further flight.

(iii) Accomplish Part II (C2), paragraphs 11 through 14 of the ASB.

(5) Within 25 hours TIS, and thereafter at intervals not to exceed 300 hours TIS, inspect the fin spar as follows:

(i) Accomplish Part II (B), paragraphs 1 through 13 of the ASB.

(ii) Repair any disbonding discovered during the inspection before further flight.

(6) Within 12 calendar months, remove the left-hand fin spar cap, P/N 212–030–447–101. Replace it with an airworthy fin spar cap or spar assembly configuration that has been demonstrated to the FAA to satisfy the structural fatigue requirements of repeated high-torque events, and is approved by the Manager, Rotorcraft Standards Staff.

(7) Installation of a fin spar that has been approved by the Manager, Rotorcraft Standards Staff, that satisfies the requirements of paragraph (b)(6) of this AD constitutes terminating action for the requirements of this AD.

(c) For Model 205B helicopters with a fin spar cap, P/N 212–030–447–101, installed, accomplish the following:

(1) Within 8 hours TIS, modify the fin and visually inspect the fin spar for cracks in accordance with Part I (A1), paragraphs 1 through 5 of Bell Helicopter Textron, Inc. Alert Service Bulletin No. 205B–98–26, Revision A, dated September 21, 1998 (205B ASB).

(i) If a crack is discovered on the fin spar, replace the fin spar cap or assembly with airworthy parts before further flight. Repair any corrosion or disbonding discovered during the inspection before further flight.

(ii) After inspecting, apply MIL–PRF–81352 clear lacquer or an equivalent coating to the two lower rivet holes and on the surface where paint and primer were removed. Spray, brush, or wipe on a protective coat of MIL–C–16173, Grade 2, or equivalent compound, over the clear lacquer. To facilitate subsequent inspections, do not replace the two lower rivets (see Figure 2 of the 205B ASB).

(iii) Before drilling or reaming, inspect all holes in the spar cap where rivets were removed for short edge distance. If an existing edge distance will be less than 1.5 times the diameter of the drill or reamed hole, repairs must be performed and must be FAA approved before proceeding.

(iv) Fasten the forward left-hand fin skin and the retainer, P/N 212–030–121–037, to the spar assembly using Hi-Loks and blind rivets as specified in Figure 2 of the 205B ASB. Reinstall the clip and radius block, if existing, removed in paragraph 2 of Part I (A1) of the 205B ASB.

(v) Install the inspection door, intermediate gearbox cover, and tail rotor driveshaft cover.

(2) After initially modifying and inspecting the fin, inspect the fin spar for cracks at intervals not to exceed 8 hours TIS as follows:

(i) Accomplish Part I (A2), paragraphs 1 through 3 of the 205B ASB.

(ii) If a crack is discovered on the spar, replace the fin spar cap or assembly with airworthy parts before further flight. Any corrosion or disbonding discovered during the inspection must be repaired before further flight.

(iii) After inspecting, accomplish Part I (A2), paragraphs 5 and 6 of the 205B ASB.

(3) Within 25 hours TIS, modify and inspect the fin as follows:

(i) Accomplish Part I (C1), paragraph 1 of the 205B ASB.

(ii) Remove the clip, P/N 212–030–099–091, and radius block, P/N 212–030–099–095, if existing. Remove the retainer, P/N 212–030–121–037, and sufficient rivets from the bottom row of the forward left-hand fin skin to allow trimming of the forward left-hand fin skin along the skin ''cutline'', approximately fin station 66.31 (see Figure 2 of the 205B ASB).

(iii) Before drilling or reaming, inspect all holes in the spar cap where rivets were removed for short edge distance. If an existing edge distance will be less than 1.5 times the diameter of the drill or reamed hole, repairs must be performed and must be FAA approved before proceeding.

(iv) Accomplish Part I (C1), paragraphs 3, 4, and 6 in the 205B ASB.

(v) If a crack is discovered on the spar, replace the fin spar cap or assembly with airworthy parts before further flight. Any corrosion or disbonding discovered during the inspection must be repaired before further flight.

(vi) Accomplish Part I (C1), paragraphs 10 through 14 of the 205B ASB.

(4) After initially modifying and dye-penetrant inspecting the fin spar, inspect the fin spar at intervals not to exceed 300 hours TIS as follows:

(i) Accomplish Part I (C2), paragraphs 1, 2, 3, 4, 5, and 7 of the 205B ASB.

(ii) If a crack is discovered on the spar, replace the fin spar cap or assembly with airworthy parts before further flight. Any corrosion or disbonding discovered during the inspection must be repaired before further flight.

(iii) Accomplish Part I (C2), paragraphs 11 through 14 of the 205B ASB.

(5) Within 25 hours TIS, inspect the fin spar at intervals not to exceed 300 hours TIS as follows:

(i) Accomplish Part I (B), paragraphs 1 through 13 of the 205B ASB.

(ii) Any disbonding discovered during the inspection must be repaired before further flight.

(6) Within 12 calendar months, remove the left-hand fin spar cap, P/N 212–030–447–101. Replace it with an airworthy fin spar cap configuration that has been demonstrated to the FAA to satisfy the structural fatigue requirements of repeated high-torque events and is approved by the Manager, Rotorcraft Standards Staff.

(7) Installation of a fin spar that satisfies the above requirements and has been approved by the Manager, Rotorcraft Standards Staff, constitutes a terminating action for the requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through a FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

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

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

Issued in Fort Worth, Texas, on May 25, 1999.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–13998 Filed 6–2–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–32]

Proposed Modification of the Legal Description of the Class E Airspace; Cincinnati, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify the legal description of the Class E airspace at Cincinnati Municipal Airport Lunken Field, OH. The legal description for this airspace includes a reference to excluding that airspace within the Cincinnati/Northern Kentucky International Airport, KY, Class C airspace area. By Airspace Docket 93–AWA–5 this class C airspace designation is being revoked, and effective at 0901 UTC, July 15, 1999, a Class B airspace area for the Cincinnati/Northern Kentucky International Airport will be established. The reference to Class C airspace in the legal description for the Class E airspace at Cincinnati Municipal Airport Lunken Field will be invalid, and this action changes that reference to Class B airspace.

DATES: Comments must be received on or before July 12, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–32, 2300 East Devon Avenue, Des Plaines, Illinois 60018, The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this proposal must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 99–AGL–32.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons

interested in being place on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify the legal description of the Class E airspace at Cincinnati, OH, by changing the reference to the Cincinnati/Northern Kentucky International Airport, KY, Class C airspace area to Class B. This Class C airspace designation is being revoked and a Class B airspace area will be established for the Cincinnati Northern Kentucky International Airport, KY, effective July 15, 1999. The area would be depicted on appropriate aeronautical charts. Class E airspace designated as a surface are published in paragraph 6002,of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordinly, pursuant to the authority delegated to me, the Federal Aviation administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E airspace designated as a surface area.

* * * * *

AGL OH E2 Cincinnati, OH [Revised]

Cincinnati Municipal Airport Lunken Field, OH

(Lat. 39° 06′ 12″N., long. 84° 25′ 07″W.)

Within a 4.1-mile radius of the Cincinnati Municipal Airport Lunken field, excluding that airspace within the Cincinnati/Northern Kentucky International Airport, KY, Class B airspace area. This Class E airspace area is effective during the specific dates and times established in advance by Notice to Airmen. the effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois on May 12, 1999.

Christopher R. Blum,

Manger, Air Traffic Division.

[FR Doc. 99–13230 Filed 6–2–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

[Docket No. 990521142–9142–01]

RIN 0625–AA54

Proposed Regulation Concerning the Revocation of Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Commerce (the ''Department'' or ''DOC'') is proposing to amend 19 CFR 351.222(b), which governs the revocation of antidumping duty orders, in whole or in part, based upon an absence of dumping. The proposed regulation is intended to conform the existing regulation to the United States' obligations under Article 11 of the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (''Antidumping Agreement'' or ''AD Agreement''). The proposed regulation, if adopted, would allow the Secretary to revoke an antidumping duty order if the Secretary concludes that producers or exporters did not sell subject merchandise at less than normal value for at least three consecutive years and that the continued application of the antidumping duty order as to those producers or exporters is no longer necessary to offset dumping.

DATES: To be assured of consideration, written comments must be received not later than July 6, 1999.

ADDRESSES: A signed original and two copies of each set of comments including reasons for any recommendation, along with a cover letter identifying the commenter's name and address, should be submitted to Robert S. LaRussa, Assistant Secretary for Import Administration, Central Records Unit, Room 1870, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Melissa G. Skinner, Office of Policy, Import Administration, U.S. Department of Commerce, at (202) 482–1560, or Myles S. Getlan, Office of the Chief Counsel for Import Administration, U.S. Department of Commerce, at (202) 482–5052.

SUPPLEMENTARY INFORMATION:

Background:

On July 24, 1997, the Department issued the final results of the third administrative review of the antidumping duty order on Dynamic Random Access Memory Semiconductors (DRAMs) Of One Megabit Or Above From Korea (62 FR 39809)(''DRAMs From Korea''), in which the Department considered the respondents'' request that the Department revoke the order, in part, under 19 CFR 353.25(a)(1996) (the precursor to 19 CFR 351.222(b)). Pursuant to this regulation, the Department may revoke an order, in whole or in part, if (1) producers and/or exporters have sold subject merchandise at not less than normal value for three consecutive years; and (2) the Secretary concludes that it is not likely that those producers and/or exporters will in the future sell subject merchandise at not less than normal value. Applying this regulation in DRAMs From Korea, the Department did not revoke the order because the second criterion had not been met.

On January 29, 1999, a panel established by the Dispute Settlement Body (DSB) of the World Trade Organization (WTO) determined that the

''not likely'' standard contained in 19 CFR 353.25(a)(2) was inconsistent with the United States' obligations under Article 11.2 of the WTO Antidumping Agreement. The panel recommended that the United States ''bring section 353.25(a)(2)(ii) of the DOC regulations . . . into conformity with its obligations under Article 11.2 of the AD Agreement.'' The DSB adopted the panel report on March 19, 1999. On April 15, 1999, the United States announced its intention to implement the recommendations and rulings of the DSB. Consistent with section 123(g) of the Uruguay Round Agreements Act, which governs the Department's implementation of adverse panel reports, the Department is revising 19 CFR 351.222(b).

Explanation of the Proposed Regulation

Pursuant to 19 CFR § 351.222(b)(1998), the Department may revoke an antidumping duty order, in its entirety or with respect to certain exporters or producers, if several criteria are met. In order to revoke an order, the Secretary must conclude that the exporter or producer has not sold subject merchandise at less than normal value for three consecutive years and that ''[i]t is not likely that those persons will in the future sell the subject merchandise at less than normal value.'' See 19 CFR 351.222(b)(1) and (2).

In its report to the DSB, the Panel considered the consistency of the ''not likely'' standard described above with the obligations contained in Article 11.2 of the Antidumping Agreement. See United States—Anti-Dumping Duty On Dynamic Random Access Memory Semiconductors (DRAMS) Of One Megabit Or Above From Korea, WT/DS99/R (adopted March 19, 1999) (''Panel Report''). Article 11.2 of the Antidumping Agreement provides:

> The authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty, upon request by any interested party which submits positive information substantiating the need for a review. Interested parties shall have the right to request the authorities to examine whether the continued imposition of the duty is necessary to offset dumping, whether the injury would be likely to continue to recur if the duty were removed or varied, or both. If, as a result of the review under this paragraph, the authorities determine that the anti-dumping duty is no longer warranted, it shall be terminated immediately.

As demonstrated by the language of Article 11.2, in reviewing the need for the continued application of an antidumping duty, the Department is obligated to terminate the duty if the Department concludes ''that the anti-dumping duty is no longer warranted.'' In interpreting the obligations contained in Article 11.2, the Panel concluded that an absence of dumping does not, in and of itself, require the revocation of an antidumping duty order. See Panel Report at para. 6.34. Thus, insofar as the Department's regulation requires exporters or producers requesting revocation to have sold subject merchandise at not less than normal value for at least three consecutive years prior to revocation, the Panel concluded that the Department's regulation is consistent with the United States' WTO obligations.

The Panel then considered whether requiring a finding that a recurrence of dumping is ''not likely'' before revoking an order was consistent with Article 11.2. In this regard, the Panel noted that Article 11.2 requires authorities ''to examine whether the continued imposition of the duty is necessary to offset dumping.'' The Panel described this obligation as follows:

> We note that the necessity of the measure is a function of certain objective conditions being in place, *i.e.* whether circumstances require continued imposition of the anti-dumping duty. That being so, such continued imposition must, in our view, be essentially dependent on, and therefore assignable to, a foundation of positive evidence that circumstances demand it. In other words, the need for the continued imposition of the duty must be demonstrable on the basis of the evidence adduced.

Panel Report at para. 6.42.

As noted above, the Panel affirmed the Department's ability to maintain an antidumping duty order in the absence of present dumping, thus validating the Department's prospective analysis in determining the need for the continued application of an order. In addition, the Panel recognized that such a prospective analysis is inherently uncertain. However, while ''[m]athematical certainty is not required, . . . the conclusions should be demonstrable on the basis of the evidence adduced.'' Panel Report at para. 6.43. In this regard, the Panel determined that the Department's ''not likely'' standard does not provide a requisite degree of predictive assurance in performing a prospective analysis nor does it provide ''any demonstrable basis on which to reliably conclude that the continued imposition of the duty is necessary to offset dumping.'' Id. at para. 6.50. Thus, the Panel concluded that the ''not likely'' criterion contained in 19 CFR 353.25(a)(2)(ii) (currently 19 CFR 351.222(b)) is inconsistent with Article 11.2 of the Antidumping Agreement.

In implementing the Panel's findings with respect to the revocation regulation, we sought to reform the regulation in a manner that will require the Department's determination of whether to revoke an order to be based upon positive evidence. In adopting the Panel Report, we recognize the Panel's conclusion that the ''not likely'' standard may, on its face, allow the Department in certain cases to maintain an order in the absence of positive evidence suggesting the necessity of maintaining the order to offset dumping. In this regard, we are confident that the revised standard provides the appropriate degree of predictive assurance required in a prospective analysis and provides a demonstrable basis upon which to reliably conclude whether maintaining the antidumping duty order is warranted.

While the Panel interpreted ''not likely'' on the basis of its common meaning and usage, the Panel's ruling was not based upon the Department's application of the standard in DRAMs from Korea or any other prior case in which the standard was applied. In addition, the Panel affirmed the Department's prospective analysis in considering whether to revoke an antidumping duty order. We took these factors into account in revising the revocation regulation.

The Department's analysis of whether to revoke antidumping duty orders based upon an absence of dumping has always implicitly addressed whether the continued application of an antidumping duty order is necessary to offset dumping. Therefore, since Article 11.2 itself provides a standard by which to measure the continued applicability of an antidumping duty order, promulgating an additional standard is not necessary to fulfill the United States' international obligations. Stated differently, the requirement contained in Article 11.2 that authorities examine the necessity of maintaining an antidumping duty constitutes a transparent, meaningful standard that can be incorporated into the Department's current statutory and regulatory scheme.

In previous cases, the Department has applied 19 CFR 353.25(a)(2), now § 351.222(b), in administrative reviews where an exporter or producer requested revocation and established that it had sold subject merchandise at not less than normal value for at least three consecutive years. The Department has consistently considered that an absence of dumping for three consecutive years was indicative that a

foreign respondent was ''not likely'' to sell at less than normal value in the future. Thus, the absence of dumping for three consecutive years served as a presumption in favor of revoking the order, which could be rebutted by positive evidence indicating that dumping may recur if the order were revoked. Such evidence reflected the likelihood that respondents would dump in the future. In this regard, we note that the Panel considered that evidence of likelihood of future dumping was relevant to a determination under Article 11.2, and suggested that one way to meet the requirements of the Antidumping Agreement would be to promulgate a standard which required a finding that respondents are likely to dump in the future before maintaining an order. See Panel Report at para. 6.48 n. 494.

It is the Department's view that the Panel's findings with respect to the ''not likely'' standard does not necessitate a wholesale change in the practice described above. When requested to revoke an antidumping duty order based upon an absence of dumping for three consecutive years, the Department intends to continue its practice of revoking orders in the absence of any other record evidence indicating that the continued application of the order is necessary to offset dumping. When additional evidence is placed on the record, the Department will fully consider all relevant factors as to whether the continued application of the order is necessary to offset dumping. Factors considered in prior cases relating to the likelihood of future dumping would still be deemed relevant under the ''necessary'' standard derived from Article 11.2 of the Antidumping Agreement. That is, the Department may consider trends in prices and costs, investment, currency movements, production capacity, as well as all other market and economic factors relevant to a particular case. An analysis of this evidence, we believe, provides a demonstrable basis upon which to reliably conclude whether the continued application of an antidumping duty order is necessary to offset dumping and provides the appropriate degree of predictive assurance required in a prospective analysis.

Effective Date

Pursuant to section 123(g)(2) of the Uruguay Round Agreements Act (''URAA'')(19 U.S.C. 3533(g)(2)), the final amended regulation may not become effective until the end of the 60-day period beginning on the date on which the Department and the Office of the U.S. Trade Representative undertake consultations with the appropriate congressional committees concerning the proposed contents of the final rule. Since the date of consultations has not yet been determined, we are unable to determine the effective date at this time. If the proposed regulation is adopted, we will publish the effective date in the notice of final rulemaking based upon the date on which the Office of the U.S. Trade Representative and the Department consults with Congress.

Classification

E.O. 12866

This proposed rule has been determined to be not significant under E.O. 12866.

Paperwork Reduction Act

This proposed rule contains no new collection of information subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

E.O. 12612

This proposed rule does not contain federalism implications warranting the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce has 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 Department's existing regulations provide a procedural and substantive process by which the Secretary considers whether to revoke an antidumping duty order. The proposed rule retains the current procedural process and revises the substantive standard used by the Secretary to make the appropriate revocation determination. As discussed above, the proposed regulation would not significantly change the Department's practice in determining whether to maintain an antidumping duty order. Moreover, as the proposed regulation only changes the standard by which the Department considers whether to revoke an antidumping duty order, this action, in and of itself, will not have a significant economic impact. Therefore, the Chief Counsel concluded that the proposed rule would not have a significant impact on a substantial number of small business entities, and a regulatory flexibility analysis was not prepared.

List of Subjects in 19 CFR Part 351

Administrative practice and procedure, Antidumping duties, Business and industry, Cheese, Confidential business information, Countervailing duties, Investigations, Reporting and recordkeeping requirements.

Dated: May 27, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

For the reasons stated, it is proposed that 19 CFR § 351.222(b) is amended to read as follows:

PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES

Subpart A—Scope and Definitions

1. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1202 note; 19 U.S.C. 1303 note; 19 U.S.C. 1671 *et seq.*; and 19 U.S.C. 3538.

Subpart B—Antidumping and Countervailing Duty Procedures

2. Section 351.222 is amended by revising paragraph (b) to read as follows:

§ 351.222 Revocation of orders; termination of suspended investigations

* * * * *

(b) *Revocation or termination based on absence of dumping.* (1) The Secretary may revoke an antidumping order or terminate a suspended antidumping investigation if the Secretary concludes that:

(i) All exporters and producers covered at the time of revocation by the order or the suspension agreement have sold the subject merchandise at not less than normal value for a period of at least three consecutive years; and

(ii) The continued application of the antidumping duty order is no longer necessary to offset dumping.

(2) The Secretary may revoke an antidumping order in part if the Secretary concludes that:

(i) One or more exporters or producers covered by the order have sold the merchandise at not less than normal value for a period of at least three consecutive years;

(ii) The continued application of the antidumping duty order as to those persons is no longer necessary to offset dumping; and

(iii) Provided that, for any exporter or producer that the Secretary previously has determined to have sold the subject merchandise at less than normal value, the exporter or producer agrees in writing to its immediate reinstatement

in the order, as long as any exporter or producer is subject to the order, if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than normal value.

* * * * *

[FR Doc. 99–14098 Filed 6–2–99; 8:45 am]

BILLING CODE 3510–DS–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 009–0130b; FRL–6331–7]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revisions: Kern County Air Pollution Control District, Modoc County Air Pollution Control District, Mojave Desert Air Quality Management District, Northern Sonoma County Air Pollution Control District, San Joaquin Valley Unified Air Pollution Control District, and Siskiyou County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern various administrative, editorial, and other modifications which do not directly affect emissions. The intended effect of this action is to update and clarify the SIP.

In the Final Rules section of this **Federal Register**, the EPA is approving these SIP submittals as a direct final rule without prior proposal because the Agency views these rules as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by July 6, 1999

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

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, California 95812.

Kern County Air Pollution Control District, 2700 ''M'' Street, Suite 302, Bakersfield, CA 93301–2370.

Modoc County Air Pollution Control District, 202 West Fourth Street, Alturas, CA 96101–3915.

Mojave Desert Air Quality Management District, 15428 Civic Drive, Ste. 200, Victorville, CA 92392–2383.

Northern Sonoma County Air Pollution Control District, 150 Matheson Street, Healdsburg, CA 95448–4908.

San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, Suite 200, Fresno, California, 93721, and

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, Suite B23, Goleta, CA 93117.

Siskiyou County Air Pollution Control District, 525 South Foothill Drive, Yreka, California, 96097–3036.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901, Telephone: (415) 744–1185.

SUPPLEMENTARY INFORMATION: This document concerns the following rule revisions:

Kern County APCD—Rule 101, Title; Rule 112, Circumvention; Rule 113, Separation and Combination; Rule 114, Severability; and Rule 115, Applicability of Emission Limits. These rules were adopted on May 2, 1996 and submitted to EPA as a SIP revision on July 23, 1996.

Modoc County APCD—Rule 4.1–2, Uncombined Water; Rule 4.6, Circumvention; Rule 4.6–1, Exception to Circumvention; and Rule 4.9, Separation of Emissions. These rules were adopted on January 3, 1989 and submitted to EPA as a SIP revision on December 31, 1990.

Mojave Desert AQMD—Rule 103, Description of the District Boundaries was adopted on June 28, 1995 and submitted to EPA as a SIP revision on August 10, 1995.

Northern Sonoma County APCD—Unnumbered rule, known as Appendix A; Unnumbered rule, known as Appendix B; Unnumbered rule, formerly Appendix C, now known as Appendix A; and Unnumbered rule, formerly Appendix D, now known as Appendix B. These appendices were adopted on February 22, 1984 and submitted to EPA as a SIP revision on October 16, 1985.

San Joaquin Valley Unified APCD—Rule 1010, Title and Rule 1130, Severability were adopted on June 18, 1992 and submitted to EPA as a SIP revision on September 28, 1994.

Santa Barbara County APCD—Rule 105, Applicability adopted on July 30, 1991 and submitted to EPA as a SIP revision on October 25, 1991.

Siskiyou County APCD—Rule 4.10, Reduction of Animal Matter, adopted on January 24, 1989 and submitted to EPA as a revision to the SIP on March 26, 1990.

For further information, please see the information provided in the direct final action that is located in the rules section of this **Federal Register**.

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

Dated: March 22, 1999.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 99–13658 Filed 6–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–83–1–7340b; FRL–6349–8]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Revision to the State Implementation Plan (SIP) Addressing Sulfur Dioxide in Harris County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing direct final approval to revisions of the Texas State Implementation Plan (SIP) for Harris County, addressing sulfur dioxide (SO_2) emissions. This action incorporates by reference into the federally approved SIP two amended Agreed Orders modifying the SO_2 allowable emissions at two stationary sources in Harris County, Texas. The Orders concern Simpson Pasadena Paper Company and Lyondel-Citgo Refining Company, both located in Houston, Texas. The intended effect of approving these Agreed Orders is to regulate SO_2 emissions in accordance with the requirements of the Clean Air Act, as amended in 1990.

In the final rules section of this **Federal Register**, we are approving

Texas' SIP revision as a direct final rule without prior proposal because we view this as a noncontroversial amendment and anticipates no adverse comments. A detailed rationale for the approval is in the direct final rule. If no adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to this action. If we receive 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. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

Please see the direct final rule of this action located elsewhere in today's **Federal Register** for a detailed description of the Texas SO_2 SIP revision.

DATES: Written comments must be received by July 6, 1999.

ADDRESSES: Written comments must be submitted to Mr. Thomas Diggs, Chief, Air Planning Section, EPA Region 6, 1445 Ross Avenue, Suite 1200 (6PD–L), Dallas, Texas, 75202–2733. Copies of the technical support document are available for public review at the EPA Region 6 office during normal business hours. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, Air Planning Section, 1445 Ross Avenue, Suite 1200, 6PD–L, Dallas, Texas, 75202–2733, telephone (214) 665–7214.

Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas, 78753, telephone (512) 239–1461.

FOR FURTHER INFORMATION CONTACT: Ms. Petra Sanchez, Air Planning Section, (6PD–L), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733, telephone, (214) 665–6686.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action of the same title which is published in the Rules and Regulations section of this **Federal Register**.

Lists of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur dioxide.

Authority: 42 U.S.C. 7402 *et seq.*

Dated: April 14, 1999.

Sammuel Coleman,

Acting Regional Administrator, Region 6.

[FR Doc. 99–13801 Filed 6–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[SD–001–0003b and SD–001–0004b; FRL–6351–9]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; South Dakota; Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the South Dakota plan and regulations for controlling landfill gas emissions from existing municipal solid waste (MSW) landfills. South Dakota submitted its original plan to EPA on May 2, 1997 and then submitted revisions to the plan on May 6, 1999. South Dakota submitted this plan to meet section 111(d) of the Clean Air Act (Act) and EPA's Emission Guidelines for existing MSW landfills at 40 CFR part 60, subpart Cc.

In the ''Rules and Regulations'' section of this **Federal Register**, we approve the State's submittals as a direct final rule without prior proposal because we view this as a noncontroversial action and anticipate no adverse comments. A detailed rationale for the approval is set forth in the preamble of the direct final rule. If no adverse comments are submitted, we will not take further action on this proposed rule. If we receive adverse comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Comments must be received in writing on or before July 6, 1999.

ADDRESSES: You should mail your written comments to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466. Copies of the State documents relevant to this proposed rule are available for public inspection at the Department of Environmental and Natural Resources, Joe Foss Building, 523 East Capitol, Pierre, South Dakota 57501–3181.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, EPA Region VIII, (303) 312–6445.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7642.

Dated: May 21, 1999.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 99–13798 Filed 6–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[TX–81–1–7350; FRL–6353–8]

Clean Air Act Reclassification or Eligibility for Extension of Attainment Date, Texas; Beaumont/Port Arthur Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We are reopening our proposal to find that the Beaumont/Port Arthur moderate ozone nonattainment area has failed to attain the one-hour ozone National Ambient Air Quality Standard, and alternatively proposing to extend the area's attainment date. We have received two requests to extend the comment period two weeks to allow additional time to review the proposal. In addition, these parties requested copies of all information and correspondence regarding the Southeast Texas Regional Planning Commission's 1997 Overwhelming Transport Demonstration. We have provided the requesters with that information and correspondence. In order to ensure that all interested parties have sufficient opportunity to submit comments, we will reopen the comment period for this proposal until July 6, 1999. We published our reasons for proposing a reclassification, and alternatively an extension, for the Beaumont/Port Arthur

area in the **Federal Register** on April 16, 1999 (64 FR 18864).

DATES: Comments must be received on or before July 6, 1999.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Texas Natural Resource Conservation Commission, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Lt. Mick Cote, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7219.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Area designations and classifications, National parks, Wilderness areas.

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

Dated: May 20, 1999.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 99–14064 Filed 6–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 176

[OPP–181051; FRL–5750–1]

RIN 2070–AD15

Tolerances for Pesticide Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing procedures and criteria under which EPA would establish tolerances for residues of pesticide chemicals resulting from emergency uses of pesticide chemicals authorized by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This regulation is required by the Federal Food, Drug, and Cosmetic Act (FFDCA), which was amended by the Food Quality Protection Act (FQPA) of 1996. FQPA established a new safety standard with special protections for infants and children and extends this new protection to the emergency use of pesticide chemicals. Specifically, FQPA requires EPA to establish time-limited tolerances, or an exemption from the requirement for a time-limited tolerance, for any pesticide uses authorized by EPA under section 18 of FIFRA that may result in residues in or on food (including animal feed). EPA actions under section 18 of FIFRA are taken in response to a petition submitted by a Federal or state agency. These proposed procedures and criteria will ensure that the Agency is able to address more quickly any tolerance related issues in conjunction with any decision made on the petition. EPA believes that the procedures proposed in this document will be protective of public health, while continuing to ensure availability of pesticides in emergency situations.

DATES: Written comments, identified by the docket control number OPP–181051, must be received on or before 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 notice.

FOR FURTHER INFORMATION CONTACT:

Joseph E. Hogue, Policy and Regulatory Services Branch, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone number: (703) 308–9072, e-mail address: hogue.joe@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Important Information

A. Does This Proposed Rule Apply to You?

You may be potentially affected by this proposed rule if you are the Federal Government or a State or territorial government agency charged with pesticide authority. Regulated categories and entities may include, but is not limited to:

Category	Examples
Federal Government	Agencies that petition EPA for section 18 pesticide use authorization.
State and territorial government agencies charged with pesticide authority.	State that petition EPA for section 18 pesticide use authorization.

This table is not all inclusive, but is intended as a guide for entities likely to be regulated by this action. To determine whether this proposed rule applies to you, carefully read the applicability criteria in a proposed § 176.1. 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 or Copies of Support Documents?

1. Electronically. You may obtain electronic copies of this document and various support documents are available from the EPA Home page at the **Federal Register**—Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/).

2. In person. The official record for this proposed rule, as well as the public version, has been established under docket control number OPP–181051, (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as 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.

C. How and to Whom Do I Submit Comments to?

You may submit comments through the mail, in person, or electronically:

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., S.W., Washington, DC 20460.

2. In person. Deliver written comments to: Public Information and

Records Integrity Branch, in Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

3. Electronically. Submit your comments and/or data electronically to: ''opp-docket@epamail.epa.gov.'' Please note that you should not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPP–181051. Electronic comments on this proposed rule may also be filed online at many Federal Depository Libraries.

D. How Should I Handle Information That I Believe Is Confidential?

You may claim information that you submit in response to this document as confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice.

II. Authority

This action is issued under the authority of the Federal Food, Drug, and Cosmetic Act as amended by the Food Quality Protection Act of 1996.

III. Background

The Food Quality Protection Act of 1996 (FQPA) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 201 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* Among other things, FQPA amends FFDCA to bring all pesticide tolerance-setting activities conducted by EPA under a new section 408 with a new safety standard and new procedures. FQPA also amends FFDCA by directing EPA to establish time-limited tolerances for any pesticide use authorized by EPA under section 18 of FIFRA that may result in residues in or on food (including animal feed). The FQPA amendments went into effect immediately.

EPA is proposing regulations to govern the establishment of time-limited tolerances for pesticide uses authorized by EPA under section 18 of FIFRA. This proposed rule pertains only to regulatory changes resulting from enactment of FQPA.

IV. Emergency Exemptions under Section 18

Section 18 of FIFRA authorizes EPA to exempt any Federal or state agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166. Generally, these regulations allow a Federal or state agency to apply for an exemption to allow a use of a pesticide that is not registered when such use is necessary to alleviate an emergency condition. A state, as defined by FIFRA section 2(aa), means a state, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands and the American Samoa. The regulations set forth information requirements, procedures, and standards for EPA's approval or denial of such exemptions.

Federal and state agencies may petition EPA for a section 18 emergency exemption from FIFRA due to a public health emergency, a quarantine emergency, or a ''specific'' emergency. Most exemptions from FIFRA petitioned for or granted under section 18 fall under the category of ''specific exemptions.'' Typical justifications for specific exemptions include, but are not limited to, the introduction of a new pest; the expansion of the range of a pest; the cancellation or removal from the market of a previously registered and effective pesticide product; and the development of resistance in pest to a registered product, or loss of efficacy in available products for any other reasons. Additionally, an emergency situation is generally considered to exist when no other viable (chemical or non-chemical) means of control exist, and where the emergency situation will cause significant economic losses to affected individuals if the exemption is not granted.

When a Federal or state agency petitions EPA under section 18, it must submit a request in writing that documents the emergency situation, the chemical(s) proposed for the use, the target pest, the crop, the rate and number of applications to be made, the geographical region where the chemical(s) would be applied, and a discussion of risks which may be posed to human health or to the environment as a result of the pesticide use (40 CFR 166.20). EPA conducts an expedited review of the request, verifying the existence of the emergency, assessing risks posed to human health through dietary exposure, assessing risks posed to farmworkers and other handlers of the pesticide, assessing any adverse effects on non-target organisms (including federally listed endangered species), and assessing the potential for contamination of ground and surface water. If an application for the requested use has been made in previous years, EPA does an assessment of the progress toward registration for the use of the requested chemical on the requested crop, and considers this status in the final determination to grant or deny the exemption. If EPA's review concludes that the situation is an emergency, and that the use of the pesticide under the exemption will not cause unreasonable adverse effects on human health or the environment, then EPA may authorize the pesticide to be used under section 18.

Section 18 pesticide uses for specific and public health exemptions can be authorized for periods not to exceed 1 year; uses under quarantine exemptions can be authorized for up to 3 years. Since actions taken under section 18 are intended to address a time-specific crisis or emergency need for temporary relief, most section 18 exemptions are specific exemptions which are granted for just one growing season. Such actions should not, therefore, be reviewed as an alternative to registering the use(s) needed for longer periods. If the situation addressed with the section 18 exemption persists, or is expected to persist, affected entities must take the proper steps to amend the existing or seek a new registration to address that future need.

In general, EPA attempts to form and communicate decisions on section 18 requests within 50 calendar days of receipt of an exemption application; in fiscal year 1998 (October 1, 1997—September 30, 1998), EPA's average response time was 56 days. During FY98, EPA received requests for 601 exemptions, of which 410 were approved (27 requests were denied, 67 requests were withdrawn by states, and 97 requests were still pending at the end of the fiscal year).

EPA maintains lines of communication with the State Departments of Agriculture (or applicant) during the application review period so they may keep growers informed on the status of the request. The Agency works with the State Departments of Agriculture so that in case a request might be denied, the affected growers may be able to find alternative solutions. In the early stages of the development of this proposed rule, EPA consulted with

representatives from the States of North Carolina and Washington on behalf of the State's FIFRA Issues Research and Evaluation Group (SFIREG). SFIREG identifies, analyzes and provides State comments to the Office of Pesticide Programs on matters relating to pesticide registration, enforcement, training and certification, water quality, disposal and other areas of environmental concern related to pesticide manufacture, use and disposal. In addition, SFIREG provides a mechanism for EPA to keep the states informed and up-to-date on its pesticide regulatory programs.

In September 1997, the Office of Pesticide programs formed a minor use office which focuses on the special needs of growers of minor use crops. EPA has expanded work in this respect with Interregional Research Project No. 4 (IR–4), a U.S. Department of Agriculture (USDA) program which provides national leadership and coordination for information on the clearance of minor use pesticides and generates data to support minor-use registrations. IR–4 will often help support minor use emergency exemptions petitions.

The section 18 program can be an important part of developing reasonable transition approaches for certain crops, especially minor use crops, in moving to safer pest control methods. For example, in certain situations, a pesticide needed for emergency use on minor use crops might be registered for other use sites which have already filled the ''risk cup.'' In order to address the needs of minor use farmers, the Agency might work with pesticide registrants and growers to cap the existing use on registered crops at a level that allows room in the risk cup for use of the pesticide in combating an emergency. Under this offset approach, the Agency could achieve either no risk increase or a risk reduction and at the same time facilitate and permit critical emergency exemptions.

In continuing efforts to implement FQPA, EPA is working together with USDA to ensure that implementation of FQPA is informed by a sound regulatory approach, by appropriate input from affected members of the public, and by due regard for the needs of our Nation's agricultural producers and other pesticide users.

V. Legal Basis of EPA Action

A. Residues in Food Prior to FQPA

Prior to enactment of FQPA, when EPA granted an emergency exemption under section 18 for use of a pesticide that could result in residues in or on food, EPA did not establish a tolerance or exemption from the requirement for a tolerance under FFDCA. rather, EPA advised the Food and Drug Administration (FDA) of the emergency exemption and the level of residues that EPA concluded would be present in or on affected foods as a result of the emergency use, and requested that FDA refrain from enforcing against foods which contained residues of the pesticide due to use under the exemption. Similarly, EPA informed the USDA of pesticide use under an emergency exemption where residues would result in meat, milk, or eggs.

B. FQPA Requirements

New section 408(l)(6) requires EPA to establish a tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in or on food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA, and requires that the tolerances be consistent with sections 408(b)(2) and (c)(2) and FIFRA section 18. Section 408(l)(6) also requires EPA to promulgate regulations governing the establishment of tolerances and exemptions under section 408(l)(6). New FFDCA section 408(b)(2)(A)(i) allows EPA to establish a tolerance (the maximum legal limit) for a pesticide chemical residue in or on a food in accordance with the following:

1. EPA must determine 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.'' Aggregate exposure includes exposure through food and drinking water, as well as all non-occupational, non-dietary exposure, such as through residential uses.

2. 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.* * *''

3. Section 408(b)(2)(D) specifies certain factors EPA is to consider in establishing a tolerance. These factors include the use of reliable data, nature of toxic effects, human risk involved, dietary consumption patterns, cumulative effects of a pesticide residue with other substances that have a common mechanism of toxicity, aggregate exposure levels, variability of the sensitivities of subgroups of consumers, endocrine disrupting effects, and appropriate safety factors.

4. Section 408(b)(3) requires that there is a practical method for detecting and measuring levels of the pesticide chemical residue in or on food. A tolerance may only be established at a level at or above the limit of detection of the designated method.

5. Section 408(c) governs EPA's establishment of exemptions from the requirement for a tolerance using the same safety standard as section 408(b)(2)(A) and incorporating the provisions of sections 408(b)(2)(C) and (D). In this preamble, EPA will use the terms ''tolerance'' to refer to exemptions from the requirement for a tolerance as well.

Section 408(l)(6) requires EPA to establish tolerances in connection with EPA's granting of FIFRA section 18 emergency exemptions. When EPA establishes a tolerance under section 408(l)(6), it may do so without providing notice or a period for public comment. Tolerances established under section 408(l)(6) must also be consistent with the safety standards in section 408(b)(2) and (c)(2) that are applicable to all tolerances under section 408, and with FIFRA section 18. Section 408(l)(6) specifies that such tolerances shall have an expiration date, but does not specify the duration of the tolerance.

VI. Interim Section 18 Practices

Since August 3, 1996, EPA has been acting on requests for section 18 exemptions and has been issuing associated tolerances on a case-by-case basis under the new safety standard mandated by FQPA. The Agency sent a letter to Federal and state agencies in September 1996, informing them of the new procedures and issued guidance on interim procedures in Pesticide Regulation Notice 97–1 (January 31, 1997). In establishing section 18-related tolerances during this interim period before issuing the section 408(l)(6) procedural regulation and before making broad policy decisions concerning the interpretation and implementation of the new section 408, EPA does not intend to set precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Rather, these early section 18 tolerance decisions are being made on a case-by-case basis and will not bind EPA as it proceeds with further rulemaking and policy development.

VII. EPA Proposal

A. Scope

This proposal deals exclusively with procedures for setting time-limited tolerances for pesticide chemical residues associated with FIFRA section 18 emergency exemptions. The proposal does not modify any regulatory policies or procedures associated with the issuance of an emergency exemption itself, nor does it affect tolerance procedures which fall under other sections of FIFRA or FFDCA.

B. Definitions

The terms defined in proposed § 176.3 of the regulatory text have the same meaning as FIFRA section 2, FFDCA section 201, and 40 CFR part 166.

C. Request for a Section 18 Tolerance

Proposed § 176.5 specifies that EPA will review data to establish a time-limited tolerance for a pesticide to be used in an emergency or crisis situation under section 18 only after it has received the emergency exemption request or a crisis situation has been declared.

D. Determining Reasonable Certainty of No Harm

In developing these proposed regulations, EPA considered several approaches for assuring timely access to information adequate to ensure that a section 18 tolerance, taking into account its limited duration and emergency nature, meets the new FFDCA safety standard of reasonable certainty of no harm.

For a number of reasons, EPA proposes to implement the new provisions of FFDCA related to section 18 tolerances in § 176.7 by evaluating each submission on a case-by-case basis to determine if adequate reliable data are available to make the ''reasonable certainty of no harm'' finding mandated under section 408 of FFDCA. EPA believes that timeliness of review in a manner responsive to the requirements of the situation is of critical importance. EPA must be able to conclude rapidly whether it has enough reliable data readily available to make a safety finding under FFDCA for the requested use. Even if EPA concludes that it is unable to establish a time-limited tolerance for the requested use, the Agency will strive to make that conclusion in sufficient time for the applicant to search for some additional method to control the emergency pest situation. This case-by-case evaluation is consistent with EPA's traditional approach to section 18 exemption requests and with the statutory mandate of FFDCA section 408(l)(6).

In addition to the practical limits on the time available for decision-making, EPA believes it is reasonable to rely on available data for several other reasons, even though those data will generally be less than those required for the establishment of a permanent tolerance. Dietary exposures to pesticide chemical residues from use under a section 18 exemption are generally less than those associated with permanent tolerances because section 18 uses are of limited duration, and because section 18 uses generally do not involve the entire U.S. production of any crop since they are granted on a state-by-state basis. Moreover, substantial hazard and exposure data are usually available. Many section 18 exemption requests are for new use sites of currently registered pesticides or for uses of previously registered pesticides which are no longer in use. Consequently, EPA may already have an extensive data base readily available to make the reasonable certainty of no harm determination to set the tolerance. Using available data is less likely to require significant increases in the resources necessary to support exemption requests. It would not significantly increase the regulatory burden on applicants by creating new data requirements for section 18 exemptions nor significantly increase costs to EPA for evaluating the requests. It is important to limit the resource requirements of the section 18 program so that both the Agency and applicants have sufficient resources to carry out their other responsibilities under FIFRA and FFDCA.

1. Data requirements. Under this approach, EPA will review data that has been submitted as required in 40 CFR part 158 for FIFRA section 18 requests and whatever additional useful data it has available in order to make the safety determination required under FFDCA for establishment of a time-limited tolerance for an emergency exemption. Pesticide Registration (PR) Notice 97–1, issued January 31, 1997, provides additional guidance on what data to submit to the Agency to enable EPA to make a ''reasonable certainty of no harm'' determination in order to issue a tolerance (for a copy of PR Notice 97–1, please contact the OPP docket, address above, or visit the EPA web site). Because EPA already has in its files much of the data it will review to make a determination on a section 18 tolerance, the Agency does not expect such data to be submitted routinely with an exemption request. EPA will exercise its best scientific judgment and rely on data submitted to support past and pending registration actions for the subject or closely related chemical, or data submitted to EPA as part of the reregistration process. When possible, applicants should cite studies previously reviewed, and found acceptable by EPA, that pertain to the requested use. EPA will not, however, conduct expedited reviews of data submitted for permanent tolerances, or for registration or reregistration actions, solely in order to ascertain the viability of establishing a tolerance for a section 18 exemption request.

In all cases, applicants must include the earliest anticipated harvest date of crops for which the section 18 exemption is being requested. This information is useful for EPA to allocate the necessary resources to establish the time-limited tolerances in time for the harvest, and will also be useful to FDA and USDA in enforcing the tolerances.

2. Agency review under a case-by-case approach. In order to determine whether EPA will be able to establish a time-limited tolerance for a requested section 18 use, EPA will consider available information relevant to the factors listed in FFDCA section 408(b)(2)(D), including:

a. Aggregate exposure to the pesticide chemical residue through:

i. Dietary exposure, including drinking water.

ii. Non-dietary, non-occupational residential exposure [indoor and out-door].

b. Cumulative effects of the pesticide chemical residue and other substances that have a common mechanism of toxicity.

c. Extra sensitivity of infants and children.

d. Potential to produce endocrine effects.

Because there is a significant scientific uncertainty at this time about how to aggregate non-dietary risk factors with dietary risk, and because generally EPA has limited data with which to evaluate common mechanism of toxicity and endocrine disruption capacities of chemicals, EPA will make its ''reasonable certainty of no harm determination'' based on available and reliable information coupled with best scientific judgment as necessary. If EPA concludes that establishment of the appropriate tolerance would result in ''a reasonable certainty of no harm'' as defined in FFDCA section 408(b), then a tolerance may be established for the requested use.

EPA will be unable to establish a time-limited tolerance for the proposed emergency exemption use, and therefore will deny the exemption request, if: (1) The Agency finds that the tolerance

does not meet the safety standard of reasonable certainly of no harm as defined in FFDCA section 408, or (2) the Agency does not have enough reliable data to make a determination that the safety standard is met.

3. Alternative approaches considered. EPA has identified other possible approaches to establishing section 18 tolerances which it could pursue. One approach was to require a full data set to support section 18 tolerances as is required in 40 CFR part 158, subparts D and F, for the establishment of permanent tolerances. However, the Agency recognized that adhering rigidly to all data specified in 40 CFR part 158, as they currently exist and as they may be modified in the future, would effectively remove section 18 as a mechanism to address emergency pest situations. Review and decisions would not be made in a timely or responsive fashion, and the process of data collection, submission and review would be equivalent to that required to establish a permanent tolerance. This would be unduly burdensome to the applicants that request emergency exemptions. They generally do not have resources to develop the data themselves and so would have to rely upon data developed by the producers of pesticide products. In sum, this approach does not consider the emergency nature or short duration of most exemption requests. Therefore, EPA believes that it would be impractical, given the urgent nature of emergency conditions.

EPA also considered a minimum data set approach in which the applicant would be required to provide a specific subset of the data normally required to establish a full tolerance which would be sufficient to support a safety determination given the time-limited nature of section 18 tolerances and the urgent nature of emergency situations. Under this approach, EPA would consider only those defined data requirements in making a safety finding. If EPA chose to implement the new provisions of FFDCA in this fashion, applicants would likely have to provide specific data to EPA to support a section 18 tolerance in addition to data which must already be submitted for emergency exemption requests in general, outlined in 40 CFR 166.20.

EPA believes that both the creation of a new, specific minimum data set to support section 18 time-limited tolerances, and the practical implementation of those requirements, would result in significant disruption to the availability of section 18 as a viable response to emergency situations requiring use of pesticide products. EPA believes that many applicants would have difficulty complying with a minimum data set because these requirements would still represent levels of technical data which most states do not have access to and currently are unable to develop. As EPA's data requirements evolve, a defined minimum data set might also require revision. Because a prescribed data set is not necessary for the Agency to conclude that a tolerance is safe and because it is EPA's belief that the amendments to FFDCA were not intended to eliminate or significantly disrupt the availability of emergency exemptions, EPA is not proposing to establish a minimum data set required for tolerances associated with section 18 requests.

A fourth approach to setting tolerances under section 18 has been suggested to the Agency. This approach was initially presented in a paper developed by a work group of the Pesticide Program Dialogue Committee and subsequently through a petition submitted by the National Food Processor's Association. Under this approach, the Agency would not conduct a full risk assessment under FQPA but would assess the incremental risk of the proposed section 18 use. If the Agency were to find the incremental risk insignificant, it would establish a time limited tolerance and grant the section 18 use without conducting a full aggregate risk assessment for the existing uses of the pesticide chemical. This approach would take into account the limited scope and duration of the emergency use of the pesticide. The NFPA petition assets that limiting the Agency's review of a section 18 tolerance to an incremental risk assessment might decrease the amount of time it takes for the Agency to review the emergency exemption application, thus taking into account the emergency nature and time sensitivity of the use and potentially allowing Agency resources to be used in other areas. In addition, the petitioners believe that the use of an incremental risk assessment may reduce the time needed to establish a tolerance after granting an emergency exemption. Although the Agency is proposing to use a case-by-case approach including aggregate risk assessment based on available data, the Agency is accepting comments on all of these alternative approaches.

E. Publication of Tolerances

Tolerances established to support emergency exemption uses of pesticide products would become effective upon publication of a final rule under proposed § 176.9. Shortly after promulgation of a tolerance, EPA would publish a final rule in the **Federal Register** establishing the tolerance and specifying the duration of the tolerance. Section 408(l)(6) of the FFDCA allows EPA to establish a tolerance without prior public notification or comment period. Additionally, EPA intends to make tolerances established under FFDCA section 408(l)(6) available electronically, so that there can be a record of the most up-to-date tolerances, their expiration dates, and any other information that can be of practical use to growers, states, and other various enforcement agencies.

F. Duration of Tolerances

Section 408(l)(6) of FFDCA provides that tolerances for emergency exemptions shall have an expiration date. Proposed § 176.11 specifies that tolerances would expire and be revoked automatically at such a time as determined by the Administrator. Timing of expiration and revocation of the tolerance would be identified at the time of establishment of the tolerance.

EPA anticipates that, typically, tolerances would not be established for a period longer than 24 months. In its discretion, and at its own initiative or at the request of an applicant, EPA may establish a section 408(l)(6) tolerance for longer periods when conditions merit such an extended time-frame. If an applicant requests a longer time-limited tolerance for a section 18 pesticide use, the applicant must adequately justify the requested duration when making its emergency exemption request, and EPA would have to consider whether the extended tolerance could pose higher risks.

G. Lawful Residues After Expiration of Tolerances

Section 408(l)(5) of FFDCA specifies that, if a tolerance for a pesticide chemical residue in or on a food has been revoked under section 408, food containing the residue is not unsafe if ''the residue is present as the result of an application or use of a pesticide at a time and in a manner that was lawful'' under FIFRA and ''the residue does not exceed a level that was authorized at the time of the application or use to be present on the food under a tolerance * * * then in effect under [FFDCA]. * * *''

Taking sections 408(l) (5) and (6) together, EPA has concluded that the best way to effect an ''expiration date'' for a tolerance established in connection with EPA's granting of a FIFRA section 18 emergency exemption is to specify that the tolerance will expire and be revoked automatically, without further

action by EPA, as of a specified date. That date will generally be 24 months or less from the date of issuance of the emergency exemption. After a tolerance is automatically revoked, food that contains residues of a pesticide chemical will still be legally marketable so long as the residues are the result of lawful use of the pesticide under the terms of the section 18 emergency exemption and are at levels within the tolerance established under section 408(l)(6).

Occasionally, use of the pesticide might occur before EPA actually establishes the necessary time-limited tolerance, such as in the case of a crisis exemption. When a time-limited tolerance is established after the time that use of the pesticide product is authorized, the residues on the subject commodity are only legal during the period of time prior to the expiration and revocation of the tolerance. In other words, there would be no ''pipeline'' provision for treated commodities if use occurred before a tolerance was set. In case of such a gap, EPA will consider setting a longer duration for the time-limited tolerance to ensure that the commodity will leave channels of trade before the tolerance expires.

EPA believes that handling the section 18-related tolerances in this manner will allow EPA to respond promptly to emergency conditions and will ensure that food containing pesticide residues as a result of use under an emergency exemption will not be considered adulterated.

H. Limitations of 408(l)(6) Tolerances

Time-limited tolerances established under the authority of FFDCA section 408(l)(6) apply to pesticide chemical residues resulting from pesticide applications authorized by EPA under provisions of FIFRA section 18. In addition, time-limited tolerances established under this section will cover commodities imported into the United States during the duration of the tolerance.

The previous establishment of a 408(l)(6) tolerance does not alter the requirement for applicants to submit formal emergency exemption requests to EPA for review. Issuing a tolerance does not grant authority to use a pesticide, but rather provides a legal limit on residues of the pesticide on food shipped in interstate commerce. Even if a time-limited tolerance for a pesticide has been established in response to one applicant's (a state, U.S. territory, or Federal agency) emergency exemption, other applicants must obtain an emergency exemption for the use of that pesticide if they experience a pest emergency which requires the use of that pesticide.

VIII. Additional Section 18 Concerns Not Addressed in This Proposed Rule

On November 21 and 22, 1996, EPA hosted a public workshop to discuss a range of issues related to emergency exemptions from FIFRA. The purpose of the meeting was to informally establish a dialogue amongst and solicit the opinions of a variety of individuals and groups affected by section 18 decisions. During this meeting, EPA encouraged discussion of various changes that may be made to regulations governing section 18. Although the meeting had been planned prior to the passage of FQPA because the new law had recently been enacted, some portions of the meeting were devoted to discussions of how implementation of FQPA could or would affect the section 18 process. Based on the November 21–22 meeting, there may be additional concerns regarding the section 18 program aside from the tolerance setting procedures set forth in this proposed rule that are of great interest to many section 18 stakeholders. EPA may, at a later date, prepare a formal proposal to make changes to the section 18 regulations.

Although this proposed rule only addresses procedures for setting tolerances in connection with section 18 exemptions, the following recommendations were presented to EPA by the National Association of State Departments of Agriculture (NASDA) and the Association of American Pesticide Control Officials (AAPCO) in a letter dated February 28, 1997, addressed to Assistant Administrator for Prevention, Pesticides and Toxic Substances, Dr. Lynn R. Goldman, M.D. NASDA and AAPCO prepared this letter to capture the recommendations of their membership following EPA's November 1996 Section 18 Stakeholder Meeting. Specifically, NASDA and AAPCO recommend that EPA implement the following changes to the section 18 emergency exemption process:

1. Seek changes to current regulations which will allow EPA the flexibility to base decisions on crop yield as opposed to crop value (or profit loss) in situations where that is a better indicator of pest damage.
2. Provide states general guidance regarding the appropriate documentation of an ''urgent, non-routine situation'' and allow states to certify that the ''urgent, non-routine situation'' exists based on the guidance.
3. Implement a performance audit program to ensure compliance with the guidance and give states justification to resist pressure to certify an ''urgent, non-routine situation'' when it does not exist.
4. Delegate to the states authority to reissue the section 18 exemption for a second or third year, based on the state's confirmation/certification that the basis for an emergency continues to exist.
5. Actively support and coordinate regional section 18 requests.
6. Enter into discussions with the states to establish reasonable monitoring criteria and approaches for wildlife and endangered species.
7. Support specific exemptions for resistance management where there is documented scientific evidence of resistance to currently registered pesticide or where valid research demonstrates that a dynamic process of resistance is developing.
8. Amend 40 CFR 166.2 to include ''reduced risk'' as an acceptable basis for granting a section 18 exemption. The definition of ''reduced risk,'' and the requirements for this request should allow states the ability to request a section 18 to allow for a pesticide use that will result in a lower potential for an adverse impact on human health or any other non-target species, including but not limited to, pest predators, pollinators, endangered species, and other organisms of special concern. Requests should be limited to only those situations where the ''reduced risk'' request will not result in additional risk to any aspect of the environment. Such requests should only be permitted where the proposed use is highly effective so that the potential for an increase in pesticide applications is extremely low.

As stated above, by including the recommendations of NASDA and AAPCO in this document, the Agency is not proposing to alter existing regulations which govern implementation of FIFRA section 18, nor is the Agency prepared to take a position on the propriety of any of the recommendations. EPA will accept comments on the eight recommendations presented by NASDA and AAPCO, should individuals or organizations wish to comment at this time. Comments on these recommendations must be identified by the docket control number, OPP–181052, rather than the docket number for this proposed rule.

EPA does not expect to address any comments resulting from these eight issues in promulgating final rules establishing procedures for setting tolerances under FFDCA section 408(l)(6), nor does the Agency intend to allow these issues to delay implementation of the tolerance setting

regulations. EPA does intend to develop a proposed rule which would make various changes to the regulations governing section 18 exemptions at a later date. At that time, the Agency will describe in much greater detail these recommendations and any other changes it has considered, and comments will be officially solicited and addressed as part of that process.

The Agency is also seeking ideas on how to reduce the time from when the emergency exemption is granted to when the tolerance is established per the request of the NFPA petition.

IX. Regulatory Requirements

A. Executive Order 12866

Pursuant to Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993), it has been determined that this proposed action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget (OMB). Applicants for section 18 emergency exemptions are the only parties, other than EPA, directly affected by this proposed action. According to the economic assessment conducted by the Agency, the direct costs of this action are insignificant to the applicants (Federal and state agencies) of section 18 emergency exemptions because additional data are not readily accessible under case-by-case approach of determining a reasonable certainty of no harm. A copy of the economic assessment is available in the public docket for this proposed rule.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agency has determined that this regulatory action does not impose any direct adverse economic impact on small entities. Applicants for section 18 emergency exemptions are U.S. states, territories, or Federal agencies which, by definition, are not small entities. Applicants for section 18 emergency exemptions are the only parties, other than EPA, directly affected by this proposed action. Therefore, pursuant to section 605(b), the agency hereby certifies that this action will not have a significant adverse impact on a substantial number of small entities. Information regarding this determination will be provided to the Chief Counsel for Advocacy of the Small Business Administration (SBA) upon request. Any comments regarding the impacts that this action may impose on small entities should be submitted to the Agency at the address listed above.

C. Paperwork Reduction Act

This proposed regulatory action does not contain any new information collection requirements that would require additional approval by OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* The information collection requirements that are related to this proposed rule have already been approved by OMB under control No. 2070–0032 (EPA ICR No. 596) and control No. 2070–0024 (EPA ICR No. 597). Specifically, EPA regulations at 40 CFR part 166 allow a state, U.S. territory, or Federal agency to apply for an emergency exemption pursuant to section 18 of FIFRA, which would allow for a pesticide to be used for a use for which that pesticide is not registered when such use is necessary to alleviate an emergency condition. The regulations set forth information requirements, procedures, and standards for EPA's approval or denial of such exemptions. OMB has approved the information collection requirements contained in part 166 under OMB control No. 2070–0032 (EPA ICR No. 596). In addition, EPA regulations in 40 CFR part 180 described the process and informational needs for requesting that the Agency establish or provide an exemption for the establishment of a tolerance or maximum residue level for the use of a pesticide on food crops. OMB has approved the information collection requirements contained in part 180 under OMB control No. 2070–0024 (EPA ICR NO. 597).

The public reporting and recordkeeping burden for the collection of information related to a section 18 exemption is estimated to average 103 hours per response annually. This estimation is based on the number of requests for section 18 exemptions that the Agency received in fiscal year 1996 (October 1, 1995–September 30, 1996), and the estimated burden associated with submitting information related to a request for the establishment of a tolerance or an exemption for a tolerance. In FY 1996, EPA received requests for 478 emergency exemptions pursuant to section 18. According to EPA ICR No. 597, the Agency has estimated the annual burden to be 1,442 hours for providing information in support of a full tolerance request under section 3 of FIFRA.

In general, ''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. The 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. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires approval under the PRA, 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.

Comments are requested 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. Send comments on the ICR to EPA as part of your overall comments on this proposed action at the address provided above, or to the Director, OPPE Regulatory Information Division, Environmental Protection Agency (Mail Code 2137), 401 M St., SW., Washington, DC 20460, with a copy of any ICR comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Please remember to include the ICR number in any correspondence. In developing the final rule, the Agency will address any comments received regarding the information collection requirements contained in this proposal.

D. Environmental Justice Considerations

Pursuant to Executive Order 12898 (59 FR 7629, February 16, 1994), entitled Federal Actions to Address—Environmental Justice in Minority Population and Low-Income Populations, the Agency has considered environmental justice related issues with regard to the potential impacts of this action on the environmental and health conditions in low-income and minority communities. The Agency has found that this proposed rule does not directly affect minority populations or low-income groups, but will be more protective of certain subpopulations such as infants and children.

E. Unfunded Mandates Reform Act

Under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4), EPA has determined that this action does not contain a

Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The costs associated with this action are described in the Executive Order 12866 section above. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

F. Enhancing Intergovernmental Partnerships

Under Executive Order 12875, entitled Enhancing Intergovernmental Parnterships (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. Today's proposal would implement requirements specifically set forth by the Congress in FFDCA section 408(l)(6) without the exercise of any discretion by EPA. EPA consulted with various state officials during the development of this proposal, including representatives from the States of North Carolina and Washington, who acted as representatives of SFIREG.

G. Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, entitled Consulatation 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. Today's proposal would implement requirements specifically set forth by the Congress in FFDCA section 408(l)(6) without the exercise of any discretion by EPA. The proposal does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposal.

H. Children's Health Protection

This proposed rule is not subject to Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because that is not an economically significant regulatory action as defined by Executive Order 12866 (see Unit IX.A.). In addition, this proposed rule is procedural in nature and does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

I. National Technology Transfer and Advancement Act

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

List of Subjects in 40 CFR Part 176

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

Dated: May 24, 1999.

Carol M. Browner,

Administrator.

Therefore, it is proposed that 40 CFR chapter I be amended by adding new part 176 to read as follows:

PART 176—TIME-LIMITED TOLERANCES FOR EMERGENCY EXEMPTIONS

Sec.

176.1 Scope and applicability.
176.3 Definitions.
176.5 Establishment of a time-limited tolerance or exemption.
176.7 Information needed to establish a tolerance.
176.9 Publications of a tolerance.
176.11 Duration of a tolerance.
176.13 Modification of a time-limited tolerance.
176.15 Effect of a tolerance.

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

§ 176.1 Scope and applicability.

This part describes the procedures and criteria under which EPA will establish time-limited tolerances and exemptions from the requirement of a tolerance for pesticide chemical residues associated with emergency or crisis exemptions under FIFRA section 18. This part applies only to tolerances issued on the initiative of EPA as the result of the issuance of an emergency exemption or the declaration of a crisis exemption. This part does not cover time-limited tolerances in any other circumstances.

§ 176.3 Definitions.

Terms have the same meaning as in the Federal Insecticide, Fungicide, and Rodenticide Act section 2, and in the Federal Food, Drug, and Cosmetic Act section 201 and § 166.3 of this chapter. In addition, the following terms are defined for the purposes of this part.

Agency means the U.S. Environmental Protection Agency.

Applicant means a State, U.S. Territory, or Federal Agency that requests an emergency exemption under §§ 166.20 through 166.35 of this chapter or declares a crisis exemption under §§ 166.40 through 166.53 of this chapter.

Crisis exemption means an exemption authorized under FIFRA section 18, in accordance with §§ 166.40 through 166.53 of this chapter.

Emergency exemption means a specific, quarantine or public health exemption authorized under FIFRA section 18 and the regulations at §§ 166.20 through 166.35 of this chapter.

EPA means the U.S. Environmental Protection Agency.

FFDCA means the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 *et seq.*)

FIFRA means the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 *et seq.*)

Tolerance means the maximum amount of a pesticide chemical residue that may lawfully be present in or on a raw agricultural commodity, or processed food, or animal feed, expressed as parts per million by weight of the pesticide chemical residue in the food or feed.

Tolerance exemption means a formal determination by the Agency pursuant to FFDCA section 408(c), 21 U.S.C. 346a(c), that no tolerance is needed for a given pesticide chemical residue in or on a particular food commodity. For purposes of this subpart, the term ''tolerance'' shall include an exemption from the requirement of a tolerance.

§ 176.5 Establishment of a time-limited tolerance or exemption.

EPA will establish a time-limited tolerance for pesticide chemical residues in or on raw or processed food

or feed resulting from the use of a pesticide chemical when EPA authorizes an emergency exemption or a crisis exemption. EPA will consider establishing such a tolerance only if an applicant under FIFRA section 18 either has requested an emergency exemption, or has stated its intention to declare a crisis exemption under FIFRA section 18 for a use that may result, directly or indirectly, in pesticide chemical residues in food or feed.

§ 176.7 Information needed to establish a tolerance.

(a) EPA will establish a time-limited tolerance only if EPA can determine that the tolerance is safe, that is, there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue. EPA will base its determination upon data submitted by the applicant and other readily available data. If, taking into account the limited duration and emergency nature of a section 18 application, the available data are not adequate to support a reasonable certainty of no harm determination, EPA will not establish a tolerance.

(b) Data and other relevant information to support the establishment of a time-limited tolerance may be submitted by the applicant, or by any other person, in support of the time-limited tolerance. The applicant may also cite relevant data previously submitted to the Agency.

§ 176.9 Publication of a tolerance.

(a) If EPA concludes that the tolerance will be safe, it may issue a regulation establishing the tolerance and publish a notice to that effect in the **Federal Register**.

(b) A tolerance under this part may be established without prior public notification of a proposed tolerance or comment period.

§ 176.11 Duration of a tolerance.

(a) Tolerances under this part become effective upon publication in the **Federal Register**, unless otherwise specified by the Administrator.

(b) Tolerances will automatically expire and be revoked, without further action by EPA, at the time set out in the **Federal Register** notice estabishing the tolerance.

(c) The Administrator may revoke a tolerance at any time if the Administrator determines that the tolerance is no longer safe.

§ 176.13 Modification of a time-limited tolerance.

If additional emergency or crisis exemptions are authorized that would extend use beyond the date of expiration or revocation of a time-limited tolerance, EPA may modify the time-limited tolerance by extending its duration. EPA will use the same criteria and procedures for modification as for establishing tolerances under this part.

§ 176.15 Effect of a tolerance.

The establishment of a tolerance under this part does not alter the requirement that any State, U.S. Territory, or Federal Agency comply with procedures established in part 166 of this chapter for emergency exemptions of FIFRA.

[FR Doc. 99–14070 Filed 6–2–99; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Parts 5 and 51c

RIN 0906–AA44

Designation of Medically Underserved Populations and Health Professional Shortage Areas

AGENCY: Health Resources and Services Administration, DHHS.

ACTION: Proposed rules; status.

SUMMARY: The Health Resources and Services Administration (HRSA) is announcing its intention to issue a second Notice of Proposed Rulemaking (NPRM) on Designation of Medically Underserved Populations (MUPs) and Health Professional Shortage Areas (HPSAs) following a period of evaluation of comments received, analysis of alternative approaches, and impact testing. This will involve a new 60-day public comment period for the revised proposal.

FOR FURTHER INFORMATION CONTACT: Richard Lee, 301–594–4280.

SUPPLEMENTARY INFORMATION: Proposed rules for designation of MUPs and HPSAs were published on September 1, 1998 (63 FR 46538). The original comment period was extended for an additional 60 days (until January 4, 1999) (63 FR 58679, November 2, 1998), and over 800 comments on the proposed rules were received. Given the large volume of thoughtful comments and the high level of concern that has been voiced about the potential impact of the proposal as published, HRSA believes it is imperative to conduct further analyses before proceeding. This will include a thorough, updated analysis of the impact of the proposal as published, applied to current data for all counties and currently designated MUPs and HPSAs, followed by testing of a number of possible revisions to the proposal, based on HRSA's analysis of the comments received. HRSA also plans to have one or more independent outside organizations verify its impact testing. A new NPRM will then be published for public comment, with a goal of publishing the revised proposal by the end of 1999. The decision to publish another NPRM with its associated public comment period means that new final regulations likely will not be implemented prior to the fall of 2000.

(Authority: 42 U.S.C. 254c and 42 U.S.C. 254e).

Dated: March 12, 1999.

Claude Earl Fox,

Administrator, Health Resources and Services Administration.

Approved: May 25, 1999.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

[FR Doc. 99–13951 Filed 6–2–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[OST Docket No. OST–99–5742; Notice 99–4]

RIN 2105–AC78

Drug and Alcohol Testing Procedures

AGENCY: Office of the Secretary, DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: This advance notice solicits public comments on a proposed procedure that organizations certifying substance abuse professionals (SAPs) could use to have members included in the Department of Transportation's substance abuse professional (SAP) definition. The Department proposes to require such organizations to obtain a National Commission for Certifying Agencies (NCCA) accreditation as a prerequisite for having the DOT review their petitions for inclusion of their members as SAPs in the Department's drug and alcohol testing program.

DATES: Comments should be submitted on or before August 2, 1999. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Written comments should be sent to Docket Clerk, Att: Docket No. OST–99–5742, Department of Transportation, 400 7th Street, SW., Room PL401, Washington DC 20590.

For the convenience of persons wishing to review the docket, it is requested that comments be sent in triplicate. Persons wishing their comments to be acknowledged should enclose a stamped, self-addressed postcard with their comment. The docket clerk will date stamp the postcard and return it to the sender. Comments may be reviewed at the above address from 9:00 a.m. through 5:30 p.m. Monday through Friday.

Commenters may also submit their comments electronically. Instructions for electronic submission may be found at the following web address: http://dmses.dot.gov/submit/. The public may also review docketed comments electronically. The following web address provides instructions and access to the DOT electronic docket: http://dms.dot.gov/search/.

FOR FURTHER INFORMATION CONTACT: Jim L. Swart, Policy Advisor, Office of Drug and Alcohol Policy and Compliance, Room 5405, (202) 366–3784; 400 7th Street, SW., Washington DC 20590.

SUPPLEMENTARY INFORMATION:

Background

The Omnibus Transportation Employees Testing Act of 1991 required that an opportunity for treatment be made available to covered employees. To implement this requirement in its alcohol and drug testing rules issued in February 1994, the Department of Transportation (DOT) established the role of ''substance abuse professional'' (SAP). The DOT rules require an employer to advise a covered employee who engages in conduct prohibited under these rules of the resources available for evaluation and treatment of substance abuse problems. Employers wishing to return an employee to safety-sensitive duties following a rule violation must first ensure that the employee has been evaluated by a SAP.

The SAP plays a pivotal role in the evaluation, referral, and treatment process of a safety sensitive employee who has violated the DOT regulations. The SAP is charged with the responsibility for making a face-to-face initial assessment and evaluation to determine what assistance, if any, is needed to address the employee's substance abuse problem. If assistance is needed, the SAP is responsible for referring the employee to the appropriate education or treatment program.

The SAP is also charged with conducting a face-to-face follow-up evaluation to determine if the employee has demonstrated successful compliance with the initial assessment and treatment recommendations. In addition, the SAP is responsible for providing the employer with a follow-up drug and/or alcohol testing plan for the employee. Based on these responsibilities, a SAP plays a major role within the testing program in managing the therapeutic decisions when the regulations are violated.

Individuals who are currently qualified to act as a SAP in the DOT drug and alcohol testing program are defined in 49 CFR 40.3 as follows:

> Substance abuse professional. A licensed physician (Medical Doctor or Doctor of Osteopathy); or a licensed or certified psychologist, social worker, or employee assistance professional; or an addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol & Other Drug Abuse). All must have knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

This proposed policy focuses on considerations related to the certification of addiction counselors to act as a SAP. The National Association of Alcoholism and Drug Abuse Counselors (NAADAC) was named in the February 1994 regulations as the only organization that could certify an addiction counselor to act as a SAP. Subsequent to those rules being published, the International Certification Reciprocity Consortium (ICRC) formally requested to have their certified counselors included in the SAP definition. The review of that petition was performed by the DOT Office of Drug and Alcohol Policy and Compliance (ODAPC).

Since a major objective of the certification process in this program is the protection of the public by ensuring that only competent professionals are permitted to serve as SAPs, the review was conducted in considerable depth. It involved numerous interviews with the principals of ICRC, their technical consultants, and the acquisition of materials that thoroughly documented their certification process. It also involved interviews with the principals of NAADAC and their associated technical professionals. The review process mapped out by the Department has twelve established evaluation standards that are provided to all certification agencies seeking inclusion in the SAP definition. The review includes a detailed assessment of test development and testing processes and an examination of the data derived from the application of their certification test over time. Following this review, the Department added the ICRC certified counselors to the SAP definition on July 17, 1996. However, the review and approval process was seen as being overly long and costly.

Subsequent to the inclusion of ICRC counselors into the SAP definition, other organizations petitioned to have their certified counselors included. This development, along with the anticipation that more organizations would petition for inclusion, caused concern that the broad regulatory oversight function at ODAPC would be disrupted. The experience involving ICRC as well as the subsequent petitioners has shown that not only is the process too protracted and costly but that the ODAPC could not effectively and efficiently examine more than one petitioning organization at a time. Provisions for the conduct of a review and approval process in ODAPC were not included in the initial promulgation of the regulations. Therefore, it was determined that a more efficient solution to the review process should be sought. We believe it is desirable that the process should enable the Department to continue portion of the review process while turning over the review's more costly, time-consuming, and technical expertise-driven elements to another entity.

We believe that an effective framework can be found in the standards used by the National Commission for Certifying Agencies (NCCA). The NCCA was created in 1989 by the National Organization for Competency Assurance (NOCA) as a commission to establish national voluntary standards and recognize compliance with these standards by agencies certifying individuals in a wide range of professions and occupations. The NCCA replaced the National Commission for Health Certifying Agencies (NCHCA), which was established in 1977 to develop criteria and standards for health certifying agencies.

The federal government played a lead role in bringing the NCHCA into being as a voluntary national organization that would serve as a platform for the development of standards of excellence in private certification. The NCCA accredits certification entities that are national in scope using standards developed originally by NCHCA in early 1978 with seed money provided by the U.S. Department of Health and Human Services under the sponsorship of then-Secretary Joseph Califano. NCCA standards were subsequently validated through research conducted by national task forces in 1980, 1981, and 1982. The standards have been updated through a

careful review process, and NCCA has been active in accrediting a variety of certification programs. The NCCA continues the mission and expands the commission's sphere of influence to include a wider range of professions and occupations.

The NOCA is a membership organization open to a variety of organizations that are interested in competency assurance issues. Membership in NOCA does not require or involve any review of certification activity. It should also be noted that NOCA membership does not involve any recognition or a discipline or profession or their certification arrangements. The NCCA is the accreditation body of NOCA. A certifying organization can be accredited by NCCA if it demonstrates compliance with applicable accreditation standards. Only those organizations that achieve NCCA accreditation recognition are allowed to display the NOCA logo on their promotional literature.

NCCA standards for accreditations are standards for voluntary certification organizations. The standards have been developed after years of research and implementation into the operation of certification organizations. They are nationally recognized principles utilized by a variety of certification organizations for certification programs in diverse professions and occupations. Accreditation by the Commission indicates that the certification organization has been evaluated by the Commission and found to meet or exceed all of its established standards.

NCCA accreditation standards are the only national and voluntary standards for certification agencies. The organizationally relevant aspects of the standards are widely respected as the most rigorous and objective benchmark by which certifying entities can gauge the quality and defensibility of their activities. The NCCA psychometric standards are consistent with the requirements set forth by the American Psychological Association, the American Educational Research Association, and the National Council on Measurement in Education, as well as those requirements established by the U.S. Equal Employment Opportunity Commission.

As a voluntary, non-profit commission, NCCA is made up of elected and appointed representatives from certifying agencies and other individuals with expertise pertinent to its activity, including a public member and two psychometricians. The accreditation process includes an intensive review of certification entity documents and examination material (i.e., validation studies, reports, and etc.) used in the agency's certification activity. Once achieved, accreditation is maintained through an annual reporting cycle and reapplication every five years. In addition to its accreditation activity, NCCA has published documents such as Guidelines for Non-Written Examinations to inform certifying entities more completely about quality certification.

In addition to the specific standards which all certification programs must meet in order to be accredited by NCAA, certain eligibility requirements must be met before a certification program can apply for review by NCCA. The program must be non-governmental (unless the certification is for government employees); national in scope; operated by a not-for-profit agency; and must have administered at least two national examinations. The Commission document, ''Standards for Accreditation of National Certification Organizations'' can be obtained by writing to the following address: National Commission for Certifying Agencies, 1200 19th Street, NW., Suite 300, Washington DC 20036–2422. This document outlines NCCA certification standards.

All applicants undergo a thorough evaluation of written materials submitted describing the structure of the agency and the process used to measure competency. The Commission is interested in many aspects of the applicant's certification program but it does not evaluate the examination's content and no on-site visits are scheduled as part of the review.

The Commission reviews applications for accreditation at any one of its meetings which are usually held three times during the year. When a certification agency is accredited by the NCAA, the organization is placed on an accreditation list and the agency is permitted to include the NCCA logo on its brochures and printed material.

Organizations seeking SAP accreditation with the Department through the NCCA mechanism would have to pay certain fees. All organizations with Commission accreditation must pay an annual accreditation fee of $3000. The $3000 accreditation fee also includes membership in the National Organization for Competency Assurance. Prior to seeking Commission accreditation, all organizations must either pay a $500 non-refundable application fee or be members of NOCA.

Based on experience and the foregoing information about NCCA, DOT seeks comments on requiring NCCA certification as a requisite for addiction counselor certification organizations wishing to have their certified counselors included in the SAP definition. DOT is proposing that the NCCA have the role as the accreditation organization because it has extensive experience in applying the only standards which are relevant in this circumstance.

Moreover, this proposal is pursued because the NCCA has evolved from the organization that developed the standards. It will be recalled that the predecessor organization—NCHCA—was established with help from the federal government to address circumstances such as this. The NCCA is presently fulfilling that role and, as a result, is uniquely qualified to support the Department's process of evaluating certifying organizations wishing to have their certified counselors included in the SAP definition.

The Department asks comment on the following regulatory text language that would implement this proposal.

Certification organizations wishing to have their certified drug and alcohol addiction counselors included in this part's definition of substance abuse professional (SAP, (see 49 CFR § 40.3) must obtain the National Commission for Certifying Agencies (NCCA) accreditation as a prerequisite for having the DOT review their petitions for inclusion into the SAP definition.

Because they have completed a stringent DOT review process, we do not contemplate that the two organizations (i.e., NAADAC and ICRC) whose certified addiction counselors are presently included in Part 40 would be affected by this requirement. We seek comment on whether this approach is appropriate or whether the two organizations should have to go through the NCCA process immediately, or within a few years. However, those organizations currently being reviewed by ODAPC would be required under this proposal to obtain NCCA accreditation. Reviews for those organizations currently in the review process will be placed ''on hold'' pending their NCCA accreditation.

The Department is currently preparing a comprehensive revision of 49 CFR part 40, its drug and alcohol testing procedures rule. We intend that the proposed rule to revise all of part 40 will address the subject matter of this ANPRM. After we review the comments on the ANPRM, we intend to incorporate the results of our review into the larger part 40 rulemaking project.

Regulatory Analyses and Notices

This advance notice of proposed rulemaking does not propose a significant rule for purposes of

Executive Order 12866 or the Department's regulatory policies and procedures. In terms of the Regulatory Flexibility Act, our preliminary conclusion is that the action on which the ANPRM seeks comment would not have a significant economic impact on a substantial number of small entities. This is because the entities that the proposal would affect are nationwide certifying organizations that are not small entities. The members of these organizations are primarily individuals, rather than entities. Because the proposal would make ODAPC's consideration of SAP certification organizations speedier and more efficient, many of the effects of the proposal would likely be positive. In any event, the Department requests comments on any small entity impacts the proposal might have.

There are no Federalism impacts sufficient to warrant a Federalism assessment. If the Department decides to include this item in the forthcoming overall part 40 NPRM, it may be viewed as involving an information collection requirement under the Paperwork Reduction Act (PRA). If so, consideration of any information collection burdens for this provision will be included in the PRA documentation for the part 40 NPRM. The authority for this ANPRM is the same as for the part 40 rulemaking in general (i.e., 49 U.S.C. 102, 301, 322, 5331, 20140, 31306, and 45101, *et seq.*).

List of Subjects in 49 CFR Part 40

Drug testing, alcohol testing, reporting and recordkeeping requirements, safety, transportation.

Issued this 10th day of May 1999, at Washington, D.C.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 99–14080 Filed 6–2–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket No. RSPA–98–3783]

RIN 2137–AB38

Qualification of Pipeline Personnel

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of availability of draft environmental assessment.

SUMMARY: This proposed rule would require pipeline operators to develop and maintain a written qualification program for individuals performing covered tasks on pipeline facilities. The intent of the rule is to ensure a qualified workforce and reduce the probability and consequences of incidents caused by human error. A draft environmental assessment of this proposed rule is available in the docket.

DATES: Interested persons may submit written comments on the Draft Environmental Assessment until July 6, 1999.

ADDRESSES: Send comments in duplicate to Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW, Washington, DC 20590–0001. Identify the docket and notice number stated in the heading of this notice. Persons should send the original plus one (1) copy. Comments may be filed electronically by e-mail at ops.comments@rspa.dot.gov. All comments and docketed material will be available for inspection and copying at the Dockets Facility between 8:30 a.m. and 5 p.m. each business day. Comments can also be reviewed over the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Marvin Fell at (202)366–6205 or by e-mail at marvin.fell@rspa.dot.gov.

SUPPLEMENTARY INFORMATION: Although no regulatory program is capable of completely eliminating human error, the objective of this proposed rule is to reduce the risk of accidents on pipeline facilities attributable to human error. In a notice of proposed rulemaking (NPRM) published October 27, 1998 (63 FR 57269), RSPA proposed to require pipeline operators to develop and maintain a written qualification program for individuals performing covered tasks. This proposed rule for qualification of individuals is intended to provide additional levels of safety. The proposed rule would require operators of pipelines to develop a qualification program to evaluate an individual's ability to perform covered tasks and to recognize and react to abnormal operating conditions that may occur while performing covered tasks.

We have analyzed the proposed rule for purposes of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*). The proposed rule should not significantly impact the environment. It should provide some improvement to the environment by reducing the probability and consequences of incidents on pipelines caused by human error. Therefore, we have determined that the proposed rule would not significantly affect the quality of the human environment. A draft environmental assessment document is available for review in the docket.

Issued in Washington, DC, on May 26, 1999.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 99–14079 Filed 6–2–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 990304061–9150–02; I.D. 051099A]

RIN 0648–AL63

Fisheries off West Coast States and in the Western Pacific; Western Pacific Crustaceans Fisheries; Bank-Specific Harvest Guidelines

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a rule that would divide the Northwestern Hawaiian Islands (NWHI) lobster fishery into four fishing grounds and allow the Southwest Regional Administrator, NMFS (Regional Administrator) to allocate the annual NWHI harvest guideline among these grounds for the 1999 season and beyond. The four lobster fishing grounds would be: Necker Island, Maro Reef, Gardner Pinnacles, and the remaining NWHI lobster fishing grounds combined. Also, the proposed rule would allow lobster vessels carrying a NMFS-certified vessel monitoring system (VMS) unit to be within the boundary of a fishing grounds immediately after it is closed, provided the vessels are making steady progress to an open fishing grounds or back to port. This rule is intended to protect the lobster resources at each fishing ground, to provide better data on stocks, and to conserve the resource.

DATES: Written comments must be received on or before June 18, 1999.

ADDRESSES: Written comments should be sent to the Regional Administrator, 2570 Dole Street, Honolulu, Hawaii 96822 (attn: Al Katekaru). Copies of the regulatory impact review/initial regulatory flexibility analysis (RIR/IRFA) (revised May 1999) and environmental assessment are available

from Kitty Simonds, Executive Director, Western Pacific Fishery Management Council (Council), 1164 Bishop St. Suite 1400, Honolulu, HI 96814. Comments regarding the collection-of-information requirements contained in this rule should be sent to the Regional Administrator and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Kitty Simonds at 808–522–8220 or Alvin Katekaru, Fishery Management Specialist, Pacific Islands Area Office, NMFS, at 808–973–2985.

SUPPLEMENTARY INFORMATION: Under the framework procedures of the Fishery Management Plan for the Crustaceans Fisheries of the Western Pacific Region (FMP) and its implementing regulations (50 CFR 660.53), the Council, at its 98th meeting, requested that the Regional Administrator initiate rulemaking to define the above four fishing grounds for the purpose of allocating the annual NWHI lobster harvest guideline among them.

The procedure for determining the annual NWHI lobster harvest guideline, which was also employed during the 1998 lobster season, follows the methodology described in FMP Amendments 7 and 9. NMFS estimates the NWHI exploitable population of lobsters (spiny and slipper lobsters combined) at the beginning of the lobster season, which opens on July 1. The exploitable lobster population is the total number of lobsters, regardless of lobster size or reproductive condition, that are vulnerable to commercial fishing gear. Commercial logbook catch and effort data, provided by fishermen and augmented by NMFS scientific/observer and dealer pack-out information, are used to estimate the exploitable lobster population for the NWHI and the four fishing grounds.

Under procedures established by this proposed rule, the Regional Administrator would be authorized to allocate the annual NWHI lobster harvest guideline between the four fishing grounds by applying the FMP-specified constant harvest rate of 13 percent to the exploitable lobster population estimates for each of the four fishing grounds. The 13-percent harvest rate is associated with a 10-percent risk of overfishing. NMFS would announce the annual total lobster harvest guideline, including the bank-specific harvest allocations, in the **Federal Register** by February 28 of each year (50 CFR 660.50). During the lobster season, NMFS would monitor the amount of lobsters harvested on a daily basis and, when the bank-specific harvest guideline for a lobster fishing ground is taken or projected to be taken, the Regional Administrator would announce, at least 24 hours in advance, closure of that fishing ground via electronic communication to each of the vessels participating in the fishery. The entire NWHI lobster fishery would close when all four fishing grounds are closed or on December 31 of that year, whichever occurs first.

Under the proposed rule, the harvest of lobster and the possession of lobster traps on board a permitted lobster vessel would be prohibited within a lobster fishing ground when the harvest guideline allocation is determined to have been taken, unless the vessel has on board an operational NMFS-certified VMS unit and makes steady progress to another fishing ground that is open, or returns to port. This proposed provision, which was implemented on a trial basis during the 1998 lobster season, is intended to encourage lobster vessels to carry a VMS unit to allow NMFS to monitor their location on a real-time basis. Also, vessels with a VMS unit would not be subject to a specified time by which their lobsters must be landed. Vessels not carrying an operational VMS unit would be required to land their lobsters within a specified time period, determined by the Regional Administrator, following closure of the fishery, as provided by current regulations (50 CFR 660.50).

At its meeting on December 3, 1998, the Council considered a number of alternatives for permanently allocating the NWHI harvest guideline between fishing grounds (or banks). These were: (1) No action (return to a pre-1998, NWHI-wide harvest guideline program); (2) Necker Island, Maro Reef, Gardner Pinnacles, and all other grounds combined (Preferred, Partial and Bank-Specific Alternative), with the option of further defining subareas as new information becomes available; (3) Necker-Maro-Gardner-other grounds, which is similar to alternative 2, but with no option for defining new areas; (4) General area where several banks are combined into broad areas, i.e., combining Nihoa-Necker-French Frigate Shoals-Gardner Pinnacles into one area, and NMFS would allocate a portion of the NWHI harvest guideline to each area; and (5) Full bank, with each of the 16 lobster banks assigned a harvest guideline to the extent data are available to estimate the exploitable lobster population for a bank. The Council concluded that the preferred alternative (Necker-Gardner-Maro-General Area lobster grounds with the option of establishing additional fishing grounds) would best meet the management objectives of the FMP and would enhance lobster resource conservation because it would help prevent local depletion at the Necker Island, Gardner Pinnacles, and Maro Reef fishing grounds and promote a broader distribution of fishing effort in other areas of the NWHI (General Area fishing grounds). Also, this action would provide more information about the lobster resource in the NWHI, because lobster fishing effort would be more widely distributed than it was in the past several years and would allow for the specification of additional fishing grounds as new information becomes available. This information, combined with a NMFS scientific data collection/observer program, should result in more effective management of the fishery. Most important, the proposed allocation system would respond to the concern that, unless lobster harvest at Necker Island, Gardner Pinnacles, and Maro Reef is limited, the lobster populations in those areas may be at risk.

If a final rule is issued after the public comment period, it is NMFS intention to make it effective before or as close as possible to the July 1, 1999, season opening and to announce bank-specific allocations of the 1999 harvest guideline concurrently, or soon thereafter as possible.

Classification

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

NMFS has prepared a regulatory impact review/initial regulatory flexibility analysis (RIR/IRFA) in compliance with the Regulatory Flexibility Act. This analysis describes the impact this proposed rule would have on small entities. The proposed rule would apply to the 12 permit holders, who own the 15 vessels in this limited entry fishery; however, typically only about half of the permitted vessels are expected to participate in each annual fishery. All participants in the fishery are small entities. No new reporting or record keeping requirements would be imposed by this proposed rule. No Federal rules are known to duplicate, overlap, or conflict with this rule. The reasons for, objectives of, and legal basis for this rule are described elsewhere in this preamble. The five alternative actions the Council considered regarding permanent allocation of the NWHI harvest guideline are discussed previously in the preamble to this rule, and in the RIR/IRFA. The IRFA compares annual revenues and costs per

vessel under the following four scenarios: (1) No allocations among fishing grounds; (2) 1998 allocation of the NWHI-wide harvest guideline among four fishing grounds, i.e., Necker Island, Maro Reef, Gardner Pinnacles, and Other Grounds; (3) 50-percent increase in the 1998 harvest allocation for each of the fishing grounds that have historically produced the majority of the lobster landings from the NWHI (i.e., Necker Island, Maro Reef, and Gardner Pinnacles); and (4) 50-percent decrease in the 1998 harvest allocation for the Necker Island, Maro Reef, and Gardner Pinnacles fishing grounds. The impact of each of the four scenarios in terms of gross revenue, operating costs, return on operations, fixed costs, net revenue, and return on investment is presented in Table 2 to the IRFA.

Based on the experience of the 1998 fishery, which was managed under a nearly identical 1-year rule on a trial basis, participants are expected to fish at the Necker Island, Maro Reef, and Gardner Pinnacles fishing grounds until each closes. Some fishing on the Other Grounds in the NWHI will take place. However, average catch per unit effort rates are expected to be lower than those on the other three fishing grounds, and the entire NWHI harvest guideline may not be taken (22 percent of the total harvest guideline was not taken in 1998). This will lead to lower average gross revenues, as well as to slightly higher travel costs compared to the same harvest guidelines unallocated among banks. However, the proposed action should result in long-term economic benefits to the fishery as the resource increases with improved fisheries management. A copy of the RIR/IRFA is available for public review and comment (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection-of-information subject to the requirements of the PRA unless that collection-of-information displays a currently valid OMB control number. This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) that has been approved by OMB under OMB Control Number 0648–0307. This rule's collection-of-information burden is only for those persons who wish to voluntarily use a VMS unit in the fishery. The collection is to query through the VMS system a vessel to learn of its location before and after the start of the season or closure of a fishing ground, which is automatic with no action required by the vessel operator, except to verify the VMS unit is operating. The burden associated with this collection is estimated to require a response time of .033 seconds. Permit holders whose vessels are not equipped with VMS would have the option of installing new VMS in order to participate under this regulatory option for the opening and closing of the lobster season and transitting between fishing grounds. Send comments regarding the collection-of-information burden or any other aspect of the information collection to NMFS and OMB (see **ADDRESSES**).

A formal section 7 consultation under the Endangered Species Act was concluded for Amendment 9, which established the harvest guideline system. On February 20, 1999, NMFS initiated an informal section 7 consultation to determine whether the effect on Hawaiian monk seals from the fishery managed under the proposed action is likely to be adverse. During the consultation NMFS will consider the Marine Mammal Commission's recommendation to prohibit lobster fishing at French Frigate Shoals, Kure Atoll, Pearl and Hermes Reef, and Lisianski Island because of their proximity to major Hawaiian monk seal breeding colonies. This consultation is expected to be concluded soon.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and record keeping requirements.

Dated: May 28, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

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

2. Section 660.12 is amended by adding the definition of ''Lobster grounds'', in alphabetical order, to read as follows:

§ 660.12 Definitions.

* * * * *

Lobster grounds refers, singularly or collectively, to the following four areas in Crustaceans Permit Area 1 that shall be used to manage the lobster fishery:

(1) *Necker Island Lobster Grounds*—waters bounded by straight lines connecting the following coordinates in the order presented: 24°00′ N. lat., 165°00′ W. long.; 24°00′ N. lat., 164°00′ W. long.; 23°00′ N. lat., 164°00′ W. long.; and 23°00′ N. lat., 165°00′ W. long.

(2) *Gardner Pinnacles Lobster Grounds*—waters bounded by straight lines connecting the following coordinates in the order presented: 25°20′ N. lat., 168°20′ W. long.; 25°20′ N. lat., 167°40′ W. long.; 24°20′ N. lat., 167°40′ W. long.; and 24°20′ N. lat., 168°20′ W. long.

(3) *Maro Reef Lobster Grounds*—waters bounded by straight lines connecting the following coordinates in the order presented: 25°40′ N. lat., 171°00′ W. long.; 25°40′ N. lat., 170°20′ W. long.; 25°00′ N. lat., 170°20′ W. long.; and 25°00′ N. lat., 171°00′ W. long.

(4) *General NWHI Lobster Grounds*—all waters within Crustaceans Permit Area 1 except for the Necker Island, Gardner Pinnacles, and Maro Reef Lobster Grounds.

* * * * *

3. Section 660.42 is amended by adding new paragraphs (a)(1)(vi) and (a)(13) to read as follows:

§ 660.42 Prohibitions.

* * * * *

(a) * * *

(1) * * *

(vi) In a lobster grounds after closure of that grounds as specified in § 660.50(b).

* * * * *

(13) Possess, on a fishing vessel that has a limited access permit issued under this subpart, any lobster trap in a lobster grounds that is closed under § 660.50(b), unless the vessel has an operational VMS unit, certified by NMFS, on board.

* * * * *

4. Section 660.48 is amended by revising paragraph (a)(7) to read as follows:

§ 660.48 Gear restrictions.

(a) * * *

(7) A vessel, whose owner has a limited access permit issued under this subpart and has on board an operational VMS unit certified by NMFS, may transit Crustaceans Permit Area 1, including Crustaceans Permit Area 1 VMS Subarea, with lobster traps on board for the purpose of moving to another lobster grounds or returning to port following the closure date, as specified in § 660.50, providing the vessel does not stop or fish and is making steady progress to another lobster grounds or back to port as determined by NMFS.

* * * * *

5. Section 660.50 is amended by revising paragraph (a) introductory text,

paragraphs (b)(1), (b)(3) and (b)(4), and adding new paragraph (b)(5) to read as follows:

§ 660.50 Harvest limitation program.

(a) *General.* Harvest guidelines for the Necker Island Lobster Grounds, Gardner Pinnacles Lobster Grounds, Maro Reef Lobster Grounds, and General NWHI Lobster Grounds for Permit Area 1 will be set annually for the calendar year and shall:

* * * * *

(b) *Harvest guideline.* (1) The Regional Administrator shall use information from daily lobster catch reports and lobster sales reports from previous years, and may use information from research sampling and other sources to establish the annual harvest guideline in accordance with the FMP after consultation with the Council.

* * * * *

(3) The Regional Administrator shall determine, on the basis of the information reported to NMFS by the operator of each vessel fishing, when the harvest guideline for each lobster ground will be reached.

(4) Notice of the date when the harvest guideline for a lobster ground is expected to be reached and specification of the closure date of the lobster grounds will be provided to each permit holder and/or operator of each permitted vessel at least 24 hours in advance of the closure. After a closure, the harvest of lobster in that lobster ground is prohibited, and the possession of lobster traps on board the vessel in that lobster ground is prohibited unless allowed under § 660.48(a)(7).

(5) With respect to the notification in paragraph (b)(4) of this section, NMFS shall provide each permit holder and operator of each permitted vessel with the following information, as appropriate:

(i) Determination of when the over-all harvest guideline for Crustaceans Permit Area 1 will be reached;

(ii) Closure date after which harvest of lobster or possession of lobster traps on board the vessel in a lobster grounds is prohibited;

(iii) Closure date after which the possession of lobster traps on board the vessel in Crustaceans Permit Area 1 is prohibited by any permitted vessel that is not operating a VMS unit certified by NMFS; and

(iv) Specification of when further landings of lobster will be prohibited by permitted vessels not carrying an operational VMS unit, certified by NMFS, on board.

* * * * *

[FR Doc. 99–14061 Filed 6–2–99; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 64, No. 106
Thursday, June 3, 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

Forest Service

Eastern Washington Cascades Provincial Advisory Committee and Yakima Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of advisory committee field trip.

SUMMARY: The Yakima Provincial Advisory Committee will meet for a field trip on Tuesday, June 15, 1999, at the Cle Elum Ranger District office, 803 West Second Street, Cle Elum, Washington. The meeting will begin at 9 a.m. with a brief orientation and then the group will depart for the field trip; the field trip is expected to end by 3:30 p.m. The main objectives of this meeting/field trip are to explore fish hatchery management as it relates to anadromous fish species recovery and to consider how hazard tree removal in a large camprgound may impact spotted owl habitat. All Yakima Province Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting/field trip to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, 509–662–4335.

Dated: May 21, 1999.

Sonny J. O'Neal,

Forest Supervisor, Wenatchee National Forest.

[FR Doc. 99–14034 Filed 6–2–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Northwest Sacramento Provincial Advisory Committee (PAC); Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Northwest Sacramento Provincial Advisory Committee (PAC) will meet on June 17, 1999, at the Mt. Shasta City Park Lower Lodge, 115 Nixon Road, Mt. Shasta, California. The meeting will begin at 9 a.m. and adjourn at 4 p.m. Agenda items include: (1) Southern Province Pilot/Demonstration Project (Cache Creek); (2) Update Clear Creek Watershed Grant Proposal (CALFED); (3) Watershed Analysis Project in Upper Stoney Creek; (4) Sierra Pacific Industries Land Exchange Presentation; and (5) Public Comment Period. All PAC meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Connie Hendryx, USDA, Klamath National Forest, 1312 Fairlane Road, Yreka, California 96097; telephone 530–841–4468; TDD (530) 841–4573; email: chendryx/r5__klamath@fs.fed.us.

Dated: May 24, 1999.

Nancy J. Gibson,

Administrative Officer.

[FR Doc. 99–13987 Filed 6–2–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052699C]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of its Mackerel Advisory Panel (AP) Monday, June 21, 1999 beginning at 1:00 p.m. eastern daylight time (EDT) and Scientific and Statistical Committee (SSC) Tuesday, June 22, 1999 beginning at 10:00 a.m. EDT via conference call to review Draft Amendment 12 to the Coastal Migratory Pelagics Fishery Management Plan (FMP). The amendment contains provisions for extending the commercial king mackerel permit moratorium from its current expiration date of October 15, 2000, by three or five years in order to provide time for the Gulf and South Atlantic Councils to develop and implement a controlled access system for the king mackerel fishery.

The Reef Fish AP will be convened via conference call at 10:00 a.m. EDT on Monday, June 21, 1999 and will conclude by 2:00 p.m. to review Draft Amendment 17 to the Fishery Management Plan for Reef Fish Resources. The SSC will also review this amendment during their conference call on Tuesday, June 22, 1999. Draft Amendment 17 contains provisions for extending the commercial reef fish permit moratorium from its current expiration date of December 31, 2000 by three, four or five years in order to provide time for the Gulf Council to develop and implement a controlled access system for the reef fish fishery.

ADDRESSES: A listening phone will be located at each of the following locations: NMFS Pascagoula Laboratory, 3209 Fredrick Street, Pascagoula, MS; telephone: 228–762–4591; and NMFS Galveston Laboratory, 4700 Avenue U, Galveston, TX; telephone: 409–766–3500. Persons who visit one of NMFS' laboratories to listen to the Mackerel AP and/or SSC sessions will be allowed to testify on the moratorium issue, when recognized by the meeting Chairman.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619; telephone: 813–228–2815.

Although other issues not contained in this agenda may come before the Panels for discussion, in accordance with the Magnuson-Stevens Fishery Conservation Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by June 14, 1999.

Dated: May 27, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–14073 Filed 6–2–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052699E]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting to receive public input on possible changes to its proposed ''Regulatory Amendment to the Reef Fish Fishery Management Plan to Set 1999 Gag/Black Grouper Management Measures.''

DATES: This meeting will begin at 8:30 a.m. on Wednesday, June 23, 1999 and continue into the afternoon as necessary.

ADDRESSES: The meeting will be held at the Oakland Terrace Clubhouse, 1900 West 11th Street, Panama City, FL.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: In March 1999, the Council voted to submit the regulatory amendment to NMFS with a proposal to create a 423 nautical square mile area off the Gulf coast of Florida that would be closed year-round to all reef fish fishing. The purpose of this proposal was to protect spawning aggregations of gag and to protect a portion of the male gag population, which stays offshore year-round and has declined in proportion to the female gag population in recent years. The regulatory amendment also proposed to provide increased protection for juvenile gag by raising the minimum size limit for gag and black grouper from the current 20 inches total length (TL) to 24 inches TL, which is the size at 50 percent female maturity for gag. The new minimum size limit for the commercial fishery would take effect immediately upon implementation, while the minimum size limit for the recreational fishery would be increased to 22 inches TL initially, followed by a 1–inch per year increase until the minimum size limit reached 24 inches TL. True black grouper, which mature at an even larger size (33 inches TL), were included in the proposal to avoid confusion that could occur due to the name ''black grouper'' being used for both species. These proposals received strong criticism from commercial and charterboat fishermen, who were concerned that the measures would severely and unnecessarily restrict their access to the gag and black grouper resource. In addition, a minority report submitted to NMFS by the five Council members who voted against the proposed regulatory amendment expressed the opinion that the amendment violated several of the National Standards in the Magnuson-Stevens Fishery Conservation and Management Act as well as the Regulatory Flexibility Act. As a result of the public reaction and the minority report, the Council voted at its May 10–13, 1999 meeting to reconsider the regulatory amendment during its next meeting in Key West on July 12–15, 1999, and to hold a public workshop prior to the July Council meeting in Panama City to consider management alternatives. All management alternatives in the regulatory amendment will be reconsidered, including those for which the Council originally proposed status quo. Those alternatives include not only the closed area and size limit proposals, but also the total allowable catch (TAC), closed seasons, recreational bag limits, and commercial trip limits.

NMFS, in its ''October 1998 Report to Congress on the Status of Fisheries of the United States,'' identified gag in the Gulf of Mexico as a stock that, while not currently overfished, is approaching an overfished condition. Under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act, the Council is required to take action to prevent overfishing from occurring for stocks identified by NMFS as approaching an overfished condition. The most recent gag stock assessment concluded that gag are being fished at a rate corresponding to between 18 and 23 percent static spawning potential ratio (SPR), or about at the existing overfishing criteria of 20 percent SPR. However, while this level of SPR is sufficient to maintain the stock, the Sustainable Fisheries Act of 1996 requires that overfishing criteria be set at a level that allows a fishery the capacity to produce the maximum sustainable yield on a continuing basis. Consequently, the Council has proposed a new overfishing criteria of 30 percent static SPR for gag to comply with this requirement. While this new SPR level will eventually produce higher yields, it requires an initial reduction in gag harvest in 1999 to between 1.33 and 2.49 million pounds. This requires a reduction of 32 to 39 percent from the average gag harvest levels from 1990–98, which have ranged from 3.29 to 5.56 million pounds per year.

Copies of the ''Regulatory Amendment to The Reef Fish Fishery Management Plan to Set 1999 Gag/Black Grouper Management Measures'' and the minority report can be obtained by calling 813-228-2815. They can also be downloaded in Adobe Acrobat format from the Council's web site: http://www.gulfcouncil.org.

Although other issues not on the agenda may come before the workshop for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified by this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by June 16, 1999.

Dated: May 27, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–14074 Filed 6–2–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052599D]

Endangered Species; Permits

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

ACTION: Receipt of an application for a scientific research permit (1219); receipt of an application to modify a permit

(1203); and issuance of permits (1198, 1214).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement: NMFS has received a permit application from Mr. Larry Goodman, of US-Environmental Protection Agency (EPA) (1219); NMFS has received an application for modifications to an existing permit from the Washington Department of Fish and Wildlife in Olympia, WA (WDFW) (1203); and NMFS has issued permits to Mr. J. Alan Huff, of the Florida Department of Environmental Protection (FL-DEP) (1198) and Ms. Jane Anne Provancha, of Dynamac Corporation (DYNCo) (1214).

DATES: Written comments or requests for a public hearing on any of the new applications or modification requests must be received on or before July 6, 1999.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

For permits 1198, 1214, and 1219: Office of Protected Resources, Endangered Species Division, F/PR3, 1315 East-West Highway, Silver Spring, MD 20910 (301–713–1401).

For permit 1203: Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

FOR FURTHER INFORMATION CONTACT:

For permits 1198, 1214, and 1219: Terri Jordan, Silver Spring, MD (301–713–1401).

For permit 1203: Tom Lichatowich, Portland, OR (503–230–5438).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

The following species and evolutionarily significant units (ESU's) are covered in this notice:

Sea Turtles

Green turtle (Chelonia mydas) (threatened/endangered), Hawksbill turtle (Eretmochelys imbricata) (endangered), Kemp's ridley turtle (Lepidochelys kempii) (endangered), Leatherback turtle (Dermochelys coriacea) (endangered), Loggerhead turtle (Caretta caretta) (threatened).

Fish

Chinook salmon (Oncorhynchus tshawytscha): Upper Columbia River (UCR) spring (endangered).

Steelhead trout (Oncorhynchus mykiss): UCR (endangered).

Shortnose sturgeon (Acipenser brevirostrum) (endangered).

New Application Received

EPA (1219) requests a 1-year permit to take shortnose sturgeon for scientific research in Gulf Breeze, Florida. The purpose of the research is to obtain information on the tolerances of port-larval and early-juvenile shortnose sturgeon, to low dissolved oxygen levels, particularly in relation to temperature and salinity.

Modification Request Received

On March 9, 1999 a notice was published (64 FR 11444) that NMFS had received an application (1203) from WDFW for a 5-year permit that would authorize takes of adult and juvenile UCR spring chinook salmon associated with a broad salmonid monitoring research program in UCR tributaries and the mainstem river. In the juvenile fish migration portion of the proposed research program, migrating smolts are proposed to be captured with screw traps, anesthetized, sampled for biological data and released downstream. NMFS has received a request for modifications to the permit (1203) that would authorize annual takes of juvenile, naturally produced and artificially propagated, UCR steelhead in the proposed juvenile fish migration study. Data from the study will provide managers valuable information that will be used to assess the survival of migrating juvenile salmonids. The modifications are requested for the duration of the permit.

Permits and Modifications Issued

Notice was published on February 4, 1999 (64 FR 5030), that FL-DEP had applied for a 5-year research permit to take up to 700 loggerhead, 250 green, 5 leatherback, 25 hawksbill, and 100 Kemp's ridley sea turtles annually from Florida waters. Turtles captured will include all life history stages from post-hatchling through adult. Of the 700 loggerheads authorized annually, 400 will be hatchlings. This research will further the understanding of life histories, habitat requirements, migratory behaviors, and threats to these five species of sea turtles occurring in Florida waters. The turtles will be captured by tended, straight-set, large-mesh tangle nets; tended, drifting large-mesh tangle nets; tended, encircling (strike) large-meshed nets; dip nets; and hand-capture. Captured turtles will be weighed, measured, photographed, and flipper and PIT tagged. Select turtles will be blood sampled, lavaged and will receive radio, sonic, and/or satellite transmitters. Additionally, laparoscopy and tumor collection will be performed on selected turtles. This work is a continuation of research permitted under scientific research Permit 878, which expired on February 28, 1999. Permit 1198 was issued on May 13, 1999, and expires March 31, 2004.

Notice was published on April 7, 1999 (64 FR 16937), that DYNCo had applied for a 5-year research permit to take listed green and loggerhead sea turtles for scientific research in Mosquito Lagoon, Florida. The purpose of the research is to continue work that began under NMFS Permit 942, granted in 1995; specifically, to: (1) Continue the comparison of current marine turtle population structure and distribution in Mosquito Lagoon to baseline data collected in 1976–1979, (2) evaluate current seasonal distribution and occurrence of sea turtles, (3) evaluate distribution patterns relative to submarine resource distribution, (4) determine regional ''importance value'' of this lagoon relative to other studied juvenile habitats on the east coast of Florida, and (5) determine the sex ratio of the subadult marine turtles inhabiting Mosquito Lagoon. Permit 1214 was issued on May 25, 1999, and expires May 31, 2004.

Dated: May 27, 1999.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–14075 Filed 6–2–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Patent and Trademark Office

RIN 0651–AB02

Official Insignia of Native American Tribes; Statutorily Required Study

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of hearings.

SUMMARY: Public Law 105–330 requires that the Patent and Trademark Office (PTO) study a variety of issues surrounding trademark protection for the official insignia of federally and/or State recognized Native American Tribes. This notice invites interested members of the public to testify at hearings on any of the topics outlined below.

DATES: Public hearings will be held on the following dates: July 8, 1999; July 12, 1999; and July 15, 1999. The July 8, 1999 hearing will start at 10 a.m. and end no later than 5 p.m. The July 12, 1999 and July 15, 1999 hearings will start at 9 a.m. and end no later than 5 p.m.

Those wishing to present oral testimony at any of the hearings must request an opportunity to do so no later than July 2, 1999.

The transcripts from each public hearing will be available for public inspection on or about August 10, 1999.

ADDRESSES: The July 8, 1999 hearing will be held in the ''Silver and Turquoise Room'' of the Indian Pueblo Cultural Center, located at 2401 12th NW, Albuquerque, New Mexico. The July 12, 1999 hearing will be held at the San Francisco Public Library, Koret Auditorium, Civic Center, located at 100 Larkin Street, San Francisco, California. The July 15, 1999 hearing will be held in the Commissioner's Conference Room, located in Crystal Park Two, Room 912, 2121 Crystal Drive, Arlington, Virginia.

Those interested in testifying on the topics presented below in the Supplementary Information section, or on any other related topics, should send their requests to the attention of Eleanor K. Meltzer, Attorney-Advisor, Office of Legislative and International Affairs, U.S. Patent and Trademark Office, 2121 Crystal Drive, Suite 902, Arlington, VA 22202.

Public Law 105–330 may be viewed via the Library of Congress website at: www.thomas.loc.gov.

FOR FURTHER INFORMATION CONTACT: Eleanor K. Meltzer by telephone: 703–306-2960; by e-mail: eleanor.meltzer@uspto.gov; or by facsimile transmission: 703–305–8885.

SUPPLEMENTARY INFORMATION:

I. Background

On October 30, 1998, President Clinton signed Public Law 105–330. Title III of this law requires the PTO to study how official insignia of Native American Tribes may better be protected under trademark law. The new law requires that the PTO complete the study and submit a report to the chairman of the Committee on the Judiciary of the Senate and to the chairman of the Committee on the Judiciary of the House of Representatives not later than September 30, 1999. The final study must address a variety of issues, including the impact of any changes on the international legal obligations of the United States, the definition of ''official insignia'' of a federally and/or State recognized Native American Tribe, and the administrative feasibility, including the cost, of changing current law or policy in light of any recommendations.

On December 29, 1998, a **Federal Register** notice was published (63 FR 71619) requesting comments on how best to conduct the study, where public hearings should be held, and who should be consulted during the study process. A follow-up **Federal Register** notice was published on March 16, 1999 (64 FR 13004) requesting public comments on the issues identified below.

II. Issues

The PTO is interested in the public's views concerning all aspects of trademark protection for the official insignia of Native American Tribes, including the following issues. These issues should form the basis for testimony at the public hearings.

(1) The Definition of ''Official Insignia''

For example, how should the PTO define ''official insignia'' of a federally or state recognized Native American Tribe?

(2) Establishing and Maintaining a List of Official Insignia

For example, how might the PTO establish a list of the official insignia of federally and/or state recognized Native American Tribes? How might the PTO maintain such a list?

(3) Impact of Changes In Current Law or Policy

For example, how might any change in law or policy with respect to prohibiting the Federal registration of trademarks identical to the official insignia of Native American Tribes, or of prohibiting any new use of the official insignia of Native American Tribes, affect Native American Tribes? How might such changes affect trademark owners? How might such changes affect the Patent and Trademark Office? How would such changes affect any other interested party? What impact might any such changes have on the international legal obligations of the United States?

(4) Impact of Prohibition on Federal Registration and New Uses of Official Insignia

For example, how might prohibiting Federal registration of trademarks identical to the official insignia of Native American Tribes affect any/all of the above-mentioned entities? How might prohibiting any new use of the official insignia of Native American Tribes affect any/all of the above-mentioned entities? What effect might such prohibitions have on the international legal obligations of the United States? What defenses, including fair use, might be raised against any claims of infringement?

(5) Administrative Feasibility

For example, what might be the administrative feasibility, including the cost, of changing the current law or policy to prohibit the registration? What might be the administrative feasibility, including the cost, of prohibiting any new uses of the official insignia of State or federally recognized Native American Tribes? What might be the administrative feasibility, including the cost, of otherwise providing additional protection to the official insignia of federally and State recognized Native American Tribes?

(6) Timing of Changes in Protection

For example, should changes in the scope of protection for official tribal insignia be offered prospectively? Retrospectively? What might be the impact of such protection (e.g., the cost to business and the public if applied retroactively)?

(7) Statutory Changes

What statutory changes might be necessary in order to provide such protection?

(8) Other Relevant Factors

What other factors, not mentioned above, might be relevant to this issue?

III. Guidelines for Oral Testimony

Individuals who wish to testify must adhere to the following guidelines, which will ensure that the PTO is able to contact speakers regarding any schedule changes:

1. Anyone wishing to testify at the hearing(s) must request an opportunity to do so no later than July 2, 1999. Requests to testify may be accepted on the date of each hearing if sufficient time is available on the schedule. No one will be permitted to testify without prior approval.

2. Requests to testify must include: The speaker's name, affiliation and title, mailing address, and telephone number. Facsimile number and Internet mail address, if available, should also be provided. Parties may include in their request an indication as to whether they wish to testify during the morning or afternoon session of the hearing(s).

3. Depending on the number of persons who wish to make presentations, speakers will be given between five and fifteen minutes to present their remarks. The exact amount of time allocated per speaker will be set after the final number of parties testifying has been determined.

4. Speakers should provide a written copy of their testimony for inclusion in the record of the proceedings.

5. A schedule providing the approximate starting time for each speaker will be distributed in the morning of the day of each hearing. Speakers are advised that the schedule for testimony will be subject to change during the course of the hearings.

Information that is provided pursuant to this notice will be made part of a public record and may be available via the Internet. In view of this, parties should not submit information that they do not wish to be publicly disclosed or made electronically accessible. Parties who would like to rely on confidential information to illustrate a point are requested to summarize or otherwise submit the information in a way that will permit its public disclosure.

Dated: May 28, 1999.

Q. Todd Dickinson,

Acting Assistant Secretary of Commerce and Acting Commissioner of Patents and Trademarks.

[FR Doc. 99–14032 Filed 6–2–99; 8:45 am]

BILLING CODE 3510–16–U

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Restraint Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Fiji

May 27, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: June 3, 1999.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, 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 limit for Categories 338/339/638/639 is being increased for recrediting of unused carryforward. The 1999 sublimit for Categories 338–S/339–S/638–S/639–S remains unchanged.

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 54451, published on October 9, 1999.

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 October 2, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Fiji 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 increase the limit for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
338/339/638/639	1,401,837 dozen of which not more than 1,104,203 dozen shall be in Categories 338–S/339–S/638–S/639–S [2].

[1]The limit has not been adjusted to account for any imports exported after December 31, 1998.

[2]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.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–14047 Filed 6–2–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Applications of the New York Merchantile Exchange for Designation as a Contract Market in Crude Oil Average Price Options, Heating Oil Average Price Options, and Unleaded Gasoline Average Price Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of terms and conditions of proposed commodity option contracts.

SUMMARY: The New York Merchantile Exchange (NYMEX or Exchange) has applied for designation as a contract market in crude oil average price options, heating oil average price options, and unleaded gasoline average price options. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority designated by

Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

DATES: Comments must be received on or before June 18, 1999.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521 or by electronic mail to *secretary@cftc.gov*. Reference should be made to the NYMEX average price option contracts.

FOR FURTHER INFORMATION CONTACT: Please contact John Forkkio of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC (202) 418–5281. Facsimile number (202) 418–5527. Electronic Mail: *jforkkio@cftc.gov*.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5100.

Other materials submitted by the NYMEX in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 C.F.R. Part 145 (1997)), except to the extent they are entitled to confidential treatment as set forth in 17 C.F.R. 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 C.F.R. 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the NYMEX, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayetts Centre, 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on May 27, 1999.

John R. Mielke,

Acting Director.

[FR Doc. 99–14082 Filed 6–2–99; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Active Duty Service Determinations for Civilian or Contractual Groups

On April 1, 1999, the Secretary of the Air Force, as the Executive Agent for the Secretary of Defense for the administration of Public Law 95–202, determined that the service of the group known as ''Vietnamese Citizens Who Served in Vietnam as Commandos Under Contract With the United States Armed Forces'' during the period January 1, 1961 to December 31, 1970, also known as The Lost Army Commandos, shall not be considered ''active duty'' under the provisions of Public Law 95–202 for the purposes of all laws administered by the Department of Veterans Affairs (VA).

For further information contact Mr. James D. Johnston at the Secretary of the Air Force Personnel Council (SAFPC), 1535 Command Drive, 3rd Floor—EE Wing, Andrews AFB, MD 20762–7002.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–13989 Filed 6–2–99; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent To Grant an Exclusive Patent License

Pursuant to the provisions of Part 404 of Title 37, Code of Federal Regulations, which implements Public Law 96–517, the Department of the Air Force announces its intention to grant the University of Cincinnati (hereinafter ''University''), a University in Cincinnati, Ohio, an exclusive license in any right, title, and interest the Air Force has in AF Disclosure No. D00362. The invention is a joint invention of University employees Ronald H. Birkhahn, Liang-Chiun Chao, Michael J. Garter, and Andrew J. Steckl, and Air Force employee James D. Scofield. The invention is entitled ''Visible Light Emitting Device Formed From Wide Band Gap Semiconductor Doped with a Rare Earth Element.''

The license described above will be granted unless an objection thereto, together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within 60 days from the date of publication of this Notice. Information concerning the application may be obtained, on request, from the same addressee.

All communications concerning this Notice should be sent to Mr. Randy Heald, Associate General Counsel (Acquisition), SAF/GCQ, 1740 Air Force Pentagon, Washington DC 20330–1740, telephone number (703) 588–5091.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–13988 Filed 6–2–99; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Navy

Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Naval Radio Transmitting Facility, Driver, VA

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: This Notice provides information regarding the redevelopment authority that has been established to plan the reuse of the Naval Radio Transmitting Facility, Driver, VA, and the surplus property that is located at that base closure site.

ADDRESSES: BRAC Real Estate Section, Department of the Navy, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Avenue, SE, Suite 1000, Washington, DC 20374–5065.

FOR FURTHER INFORMATION CONTACT: For further information, contact Richard A. Engel, Head, BRAC Real Estate Section, Department of the Navy, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Avenue, SE, Suite 1000, Washington, DC 20374–5065, telephone (202) 685–9203, or Robert T Renner, Realty Specialist, Real Estate Development Branch (Code 243RR), Real Estate Division, Atlantic Division, Naval Facilities Engineering Command, 1510 Gilbert Street, Norfolk, VA 23511–2699, telephone (804) 322–4934.

SUPPLEMENTARY INFORMATION: In 1993, the Naval Radio Transmitting Facility, Driver, VA, was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. Pursuant to this designation, on September 27, 1993 the land and facilities at this installation

were declared excess to the Department of Navy and made available for use by other Federal public agencies. Approximately 215 acres have been requested by another Federal agency. That property is not included in this notice.

Election To Proceed Under New Statutory Procedures

Subsequently, the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Pub. L. 103–421) was signed into law. Section 2 of this statute gives the redevelopment authority at base closure sites the option of proceeding under new procedures with regard to the manner in which the redevelopment plan for the base is formulated and how requests are made for future use of the property by homeless assistance providers and non-federal public agencies. On November 18, 1994, the City of Suffolk, VA submitted a timely request to proceed under the new procedures. Accordingly, this notice of information regarding the redevelopment authority fulfills the **Federal Register** publication requirement of section 2(e)(3) of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

Also, pursuant to paragraph (7)(B) of section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the surplus property at the Naval Radio Transmitting Facility, Driver, VA, is published in the **Federal Register**.

Redevelopment Authority

The base closure local redevelopment authority for the Naval Radio Transmitting Facility, Driver, VA, for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the City of Suffolk, VA. Day-to-day operations of the City of Suffolk, VA base closure local redevelopment authority are handled by a professional staff. For further information contact Mr. Robert Goumas, Department of Planning, City of Suffolk, PO Box 1858, 428 West Washington Street, Suffolk, Virginia, telephone (804) 538–0687 and facsimile (804) 539–7693.

Surplus Property Descriptions

The following is a listing of the land and facilities at the Naval Radio Transmitting Facility, Driver, VA, that are surplus to the federal government.

Land

Approximately 384 acres of improved and unimproved fee simple land at the U.S. Naval Radio Transmitting Facility, Driver, VA, City of Suffolk, Virginia.

Buildings

The following is a summary of the facilities located on the above-described land, which is available. The facility operationally closed on March 31, 1994. Property numbers are available on request.

—Bachelor quarters housing facilities (2 structures). Comments: Approx. 17,338 square feet, including a 3,538 square foot dining facility.
—Administration/Operations facilities (3 structures). Comments: Approx. 63,120 square feet. One building, the former transmitter building, contains 54,260 square feet.
—Maintenance facilities (3 structures). Comments: Approx. 10,833 square feet. Automotive, antenna/electronics, and public works maintenance facilities.
—Storage buildings (5 structures). Comments: Approx. 14,024 square feet.
—Recreational facilities (2 structures). Comments: Approx. 1600 square feet. Outdoor pavilion and latrine.
—Piers and wharves (1 structure). Comments: Approx. 167 square feet wooden fishing pier.
—Utilities. Comments: Measuring systems vary. Telephone, electrical, roads, and water.

Expressions of Interest

Pursuant to paragraph 7(C) of section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Naval Radio Transmitting Facility, Driver, shall submit to the redevelopment authority (City of Suffolk) a notice of interest, of such governments, representatives, and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraphs 7(C) and (D) of section 2905(b), the redevelopment authority shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in Suffolk, VA, the date by which expressions of interest must be submitted.

Dated: May 24, 1999.

Ralph W. Corey,

Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 99–13992 Filed 6–2–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for the Disposal and Reuse of Naval Air Station Cecil Field, Duval and Clay Counties, Florida

SUMMARY: The Department of the Navy (Navy), pursuant to Section 102(c)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C) (1994), and the regulations of the Council on Environmental Quality that implement NEPA procedures, 40 CFR Parts 1500–1508, hereby announces its decision to dispose of Naval Air Station (NAS) Cecil Field, which is located in Duval County and Clay County, Florida.

Navy analyzed the impacts of the disposal and reuse of NAS Cecil Field in an Environmental Impact Statement (EIS), as required by NEPA. The EIS analyzed five reuse alternatives and identified the NAS Cecil Field Final Base Reuse Plan dated February 1996 (Reuse Plan) as the Preferred Alternative. The Preferred Alternative proposed to use the base for aviation, industrial, commercial, forestry and conservation activities; to develop public parks and recreational areas; and to establish a natural resource corridor. The City of Jacksonville is the Local Redevelopment Authority (LRA) for NAS Cecil Field. Department of Defense Rule on Revitalizing Base Closure Communities and Community Assistance (DoD Rule), 32 CFR 176.20(a).

Navy intends to dispose of NAS Cecil Field in a manner that is consistent with the Reuse Plan. Navy has determined that the proposed mixed land use will meet the goals of achieving local economic redevelopment and creating new jobs, while limiting adverse environmental impacts and ensuring land uses that are compatible with adjacent property. This Record of Decision does not mandate a specific mix of land uses. Rather, it leaves selection of the particular means to achieve the proposed redevelopment to the acquiring entities and the local zoning authorities.

Background: Under the authority of the Defense Base Closure and Realignment Act of 1990 (DBCRA), Public Law 101–510, 10 U.S.C. 2687 note (1994), the 1993 Defense Base

Closure and Realignment Commission recommended the closure of Naval Air Station Cecil Field. This recommendation was approved by President Clinton and accepted by the One Hundred Third Congress in 1993. The base is scheduled to close on September 30, 1999.

Most of the property comprising NAS Cecil Field is located in the southwestern part of Duval County, Florida, about 14 miles west of the City of Jacksonville's downtown area. Duval County and the City of Jacksonville have congruent geographic boundaries and a largely consolidated government.

The Cecil Field property covers 40,354 acres and consists of nine parcels that are owned or otherwise controlled by Navy through special use permits and easements. The base's Main Station, located in Duval and Clay Counties, covers about 9,336 acres of Navy-owned property. Navy controls an additional 180 acres near the Main Station by way of easements for air operations. The Yellow Water Weapons Area, located in Duval County just north of the Main Station, covers about 8.118 acres of Navy-owned property.

Outlying Landing Field (OLF) Whitehouse, located in Duval County about seven miles north of the Main Station, covers about 1,907 acres of Navy-owned property. Navy controls an additional 658 acres near OLF Whitehouse by way of easements for air operations. The Pinecastle Target Complex covers about 2,691 acres of Navy-owned property. Navy controls an additional 17,409 acres by way of special use permits for target range operations. Navy controls an additional three acres near the ranges by way of easements that permit travel on access roads. The Palatka Radar Site is located at the Kay Larkin Airport in Putnam County and covers one acre controlled by way of a special use permit. The last parcel, known as the Tactical Aircrew Training System, is located in McIntosh County, Georgia. It covers about 51 acres of Navy-owned property.

The Pinecastle Target Complex is composed of four parcels. The Stevens Lake Range, located in Clay County about 20 miles south of downtown Jacksonville, covers about 2,554 acres and is controlled by way of a special use permit. The Rodman Range, located in Putnam County about 50 miles south of downtown Jacksonville, covers about 2,690 acres of Navy-owned property and two and one half acres that Navy controls through easements. The Lake George Range, located in Putnam County and Volusia County about 65 miles south of downtown Jacksonville, covers about one acre of Navy-owned property, one half acre controlled through easements, and about 8,960 acres that Navy controls by way of a special use permit. The Pinecastle Range, located in Lake County and Marion County about 80 miles south of downtown Jacksonville, covers about 5,895 acres that Navy controls by way of a special use permit.

The 1995 Defense Base Closure and Realignment Commission modified in the 1993 Commission's recommendation by directing Navy to retain certain properties associated with NAS Cecil Field in support of operations at the nearby Naval Air Station Jacksonville. The 1995 Commission's recommendation was approved by President Clinton and accepted by the One Hundred Fourth Congress in 1995.

The retained properties consist of 200 units of military family housing situated on 252 acres in the southwest corner of the Yellow Water Weapons Area; OLF Whitehouse; the Pinecastle Target Complex, including the Stevens Lake Range, the Rodman Range, the Lake George Range, and the Pinecastle Range; the Palatka Radar Site; and the Tactical Aircrew Training System site.

This Record Of Decision addresses the disposal and reuse of those parts of NAS Cecil Field that are surplus to the needs of the Federal Government. This property, located on the Main Station and at the Yellow Water Weapons Area, covers about 17,202 acres of Navy-owned property. Navy will transfer its interests in the easements to the acquiring entities. These easements impose restrictions on 180 acres of private property near the northeast corner of the Main Station. The surplus property at the base contains about 175 buildings and structures that provide about 2.9 million square feet of space.

The Main Station is located south of Normandy Boulevard (Duval County Route 228), which separates the Main Station from the Yellow Water Weapons Area. The Main Station contains four runways: two parallel 8,000-foot runways and one 12,500-foot runway with a parallel 8,000-foot runway. There are eight hangars and associated aviation maintenance and fueling facilities. The Main Station has administrative offices, training facilities, personnel support facilities, medical facilities, recreational areas, and 97 family housing units. It also contains large areas of undeveloped forests, clearings, and wetlands.

The Yellow Water Weapons Area is located north of Normandy Boulevard. It contains ordnance storage buildings, maintenance facilities, barracks, personnel support facilities, and recreational areas as well as the 200 family housing units retained by Navy. Most of the Yellow Water Weapons Area consists of undeveloped forests, clearings, and wetlands.

Navy published a Notice of Intent in the **Federal Register** on January 25, 1995, announcing that Navy would prepare an EIS for the disposal and reuse of NAS Cecil Field. On February 9, 1995, Navy held a public scoping meeting at the Post of Snyder, Army National Guard Center in Jacksonville, Florida, and the scoping period concluded on March 11, 1995.

Navy distributed the Draft EIS (DEIS) to Federal, State, and local governmental agencies, elected officials, community groups and associations, and interested persons on April 25, 1997, and commenced a 45-day public review and comment period. During this period, Federal, State, and local agencies, community groups and associations, and interested persons submitted oral and written comments concerning the DEIS. On May 27, 1997, Navy held a public hearing at the Army National Guard Center to receive comments on the DEIS.

Navy's responses to the public comments were incorporated in the Final EIS (FEIS), which was distributed to the public on October 16, 1998, for a review period that concluded on November 23, 1998. Navy received three letters commenting on the FEIS.

Alternatives: NEPA requires Navy to evaluate a reasonable range of alternatives for the disposal and reuse of this surplus Federal property. In the FEIS, Navy analyzed the environmental impacts of five reuse alternatives. Navy also evaluated a ''No Action'' alternative that would leave the property in caretaker status with Navy maintaining the physical condition of the property, providing a security force, and making repairs essential to safety.

On July 19, 1993, the City of Jacksonville, acting as the LRA, established the Base Conversion and Redevelopment Commission. City of Jacksonville Executive Order 93–167. On December 19, 1994, the City of Jacksonville renamed this body the Cecil Field Development Commission. City of Jacksonville Executive Order 94–190. The Commission conducted six public forums, held numerous meetings, and made several public presentations where it solicited comments from the public concerning the proposed reuse of NAS Cecil Field. On February 26, 1996, the Commission completed the NAS Cecil Field Final Base Reuse Plan, and, on April 22, 1997, the Jacksonville City Council approved the Reuse Plan. City Council Resolution No. 97–329–A. On

July 10, 1997, the City of Jacksonville dissolved the Cecil Field Development Commission and assigned responsibility for redevelopment of the base to the Jacksonville Economic Development Commission. City of Jacksonville Executive Order 97–210.

The Reuse Plan, identified in the FEIS as the Preferred Alternative, proposed a mix of land uses. The Preferred Alternative would use the runways, hangars, and related maintenance buildings, covering 2,013 acres, as an airport serving civilian general aviation and military helicopter operations. This Alternative would use 3,453 acres for light industrial activities; 1,030 acres for heavy industrial activities; 206 acres for commercial retail activities; 2,944 acres for parks and recreational activities; 2,836 acres for forestry; and 640 acres for conservation purposes. The Preferred Alternative proposed to reserve 4,080 acres for forest land for future expansion of the airport facilities. The Preferred Alternative would also establish a Natural and Recreation Corridor to protect wildlife and habitat. It will be necessary to make extensive utility infrastructure and roadway improvements to support the Reuse Plan's proposed redevelopment of undeveloped property at Cecil Field.

On the Main Station's southern edge, the Preferred Alternative proposed to use 640 acres as a conservation area. North and northeast of this conservation area, the Preferred Alternative would reserve two parcels, comprising about 4,080 acres of forest land, for future expansion of the airport facilities. The four runways, located north of the conservation area and between the two forestry parcels, would be used for air operations. The eight hangars and related maintenance buildings, located north and west of the runways, would be used for aviation operations and support services. Some of the aviation facilities would be used by helicopter units of the Florida National Guard. Some buildings located north and west of the hangars and maintenance buildings would be demolished to build new facilities for use in heavy industries such as manufacturing and as shops for assembling automotive and aviation parts.

The barracks, classrooms, and offices in the area north and west of the hangars would be retained and used as a conference and training center for private entities occupying buildings on the property. West of this conference and training center, the property that presently includes the Cecil Field golf course, Lake Fretwell, and Lake Newman would be maintained as a recreational area. On the western edge of the Main Station, the undeveloped property would be maintained as forest land.

North of the heavy industrial area, on the southern side of Normandy Boulevard, the Preferred Alternative would build commercial facilities such as retail stores, banks and credit unions, and a United States Post Office. East of this commercial area and north of the aviation facilities, the Preferred Alternative would build new light industrial facilities.

At the Yellow Water Weapons Area, north of Normandy Boulevard, property in the eastern half and in the central part would be redeveloped for light and heavy industrial activities. In the northwest corner, the Preferred Alternative would maintain the undeveloped forest land. In the southwest corner, the Preferred Alternative would provide a recreational area. On the southern edge of the Yellow Water Weapons Area, along Normandy Boulevard, the Preferred Alternative would build facilities for commercial activities similar to those proposed for the Main Station.

The property located in the western parts of the Main Station and Yellow Water Weapons Area to be used for forestry, forestry reserve and conservation purposes and about half of the parks and recreational area would also be designated as a Natural and Recreation Corridor (Corridor). This Corridor, covering about 6,306 acres, would connect Carey State Forest north of the Yellow Water Weapons Area with Jennings State Forest south of the Main Station. The Corridor would preserve significant natural resources and enable wildlife to migrate between these two State forests.

To establish and maintain the Corridor, the City of Jacksonville, the Jacksonville Port Authority, Clay County, the Florida Department of Environmental Protection, and the St. Johns River Water Management District entered into a Memorandum Of Understanding (MOU) on March 13, 1998. This MOU recognizes that the western part of the base contains significant natural resources and is more suited for conservation and passive recreational activities. The MOU provides that the Corridor and the two State forests will be managed uniformly as an integrated system of wetlands and upland forests.

Navy analyzed a second ''action'' alternative, described in the FEIS as Alternative Reuse Scenario (ARS) 1. In ARS 1, the acquiring entity would own the property but would not prepare a redevelopment plan for it. Instead, the acquiring entity would publicize the availability of existing facilities on the Main Station for reuse. This Alternative would not use the base's aviation facilities as a general aviation airport and would dedicate the entire Yellow Water Weapons Area, covering about 7,866 acres, to forestry use.

On the Main Station, ARS 1 proposed to use 158 acres, including some of the aviation facilities in the developed area north and west of the runways, for the Florida National Guard's helicopter operations. This Alternative would use the remaining facilities covering 893 acres at the Main Station for office and light industrial activities. South of Normandy Boulevard and west of the developed area, this Alternative proposed to use 573 acres for parks and recreational activities. These activities would include use of the Cecil Field golf course and the recreational areas at Lake Fretwell and Lake Newman. The remaining 7,712 acres in the western, southern and eastern parts of the Main Station would be dedicated to forestry.

Navy analyzed a third ''action'' alternative, described in the FEIS as ARS 2. In ARS 2, the acquiring entity would take only moderate action to stimulate redevelopment of the base. Instead, redevelopment would focus on using the existing facilities for civilian general aviation and military helicopter operations and market-driven office and light industrial activities. Most of the property, *i.e.*, 11,737 acres, would be dedicated to forestry uses.

On the Main Station, ARS 2 proposed to use 1,833 acres for civilian general aviation and military helicopter operations like those proposed in the Preferred Alternative. The four runways, eight hangars and related maintenance buildings would be used for aviation operations and support services. North and west of the aviation facilities and runways, ARS 2 proposed to use the remaining buildings on the Main Station for office and light industrial activities. South of Normandy Boulevard and west of the developed area, this Alternative would provide a park and recreational area that would include use of the Cecil Field golf course and the recreational areas at Lake Fretwell and Lake Newman. The remaining Main Station property *i.e.*, the western, southern and eastern parts, would be maintained as undeveloped forest land.

At the Yellow Water Weapons Area, ARS 2 proposed to use the ordnance storage buildings, maintenance facilities, barracks, and personnel support facilities in the center of the property for office and light industrial activities. This Alternative would provide a park and recreational area in

the southwest corner. The remaining property in the Yellow Water Weapons Area, *i.e.*, the eastern, northern, and northwestern parts, would be maintained as undeveloped forest land.

Navy analyzed a fourth ''action'' alternative, described in the FEIS as ARS 3. In ARS 3, the acquiring entity would direct and market the redevelopment of Cecil Field for non-aviation uses. Thus, all of the aviation facilities would be modified to serve non-aviation purposes or would be demolished. This Alternative proposed to build a 3,250-unit residential community on 3,437 acres in the eastern part of the Main Station where the Preferred Alternative would reserve forest land for future expansion of the airport.

On 786 acres west of this residential area, ARS 3 would use the existing aviation facilities in the developed area for commercial purposes. North of these businesses, ARS 3 proposed to build a 241-acre business park. At the southern end of the Main Station, ARS 3 proposed to maintain 2,291 acres of undeveloped forest land for conservation purposes. North and northwest of this conservation area, ARS 3 proposed to build manufacturing facilities.

South of Normandy Boulevard and west of the developed area, this Alternative would provide a park and recreational area that would include use of the Cecil Field golf course and the recreational areas at Lake Fretwell and Lake Newman. South of Normandy Boulevard and north of the residential area, ARS 3 would build commercial facilities such as retail stores, banks and credit unions, and a United States Post Office to support the residential community.

At the Yellow Water Weapons Area, ARS 3 proposed to build light industrial facilities on 4,184 acres located in the northern and eastern parts of the property. In the center of the property, at the developed ordnance storage area, ARS 3 would use 1,574 acres for open space. On the western side and in the southwest corner of the Yellow Water property, ARS 3 proposed to build manufacturing facilities.

Navy analyzed a fifth ''action'' alternative, described in the FEIS as ARS 4. This Alternative proposed aggressive redevelopment and marketing of NAS Cecil Field for aviation and other industrial uses similar to the Preferred Alternative. It proposed to use the runways, hangars, and related maintenance buildings, covering 2,011 acres, as an airport serving civilian general aviation and military helicopter operations. This Alternative would use 3,362 acres for light industrial activities; 1,029 acres for heavy industrial activities; 1,565 acres for correctional facilities; 207 acres of commercial retail activities; 2,955 acres for parks and recreational activities; 980 acres for forestry; and 641 acres for conservation purposes. It also proposed to reserve 4,452 acres of forest land for future expansion of the airport facilities.

At the southern end of the Main Station, ARS 4 proposed to use 641 acres as a conservation area. North and northeast of this conservation area, ARS 4 would reserve two parcels, comprising 4,452 acres of forest land, for future expansion of the airport facilities. The four runways, located north of the conservation area and between the two forestry parcels, would be used for air operations. The eight hangars and related maintenance buildings, located north and west of the runways, would be used for aviation operations and support services. Some of the aviation facilities would be used by helicopter units of the Florida National Guard. Some of the existing buildings located north and west of the hangars and maintenance buildings would be demolished to build new facilities for use in heavy industries such as manufacturing and as shops for assembling automotive and aviation parts.

The barracks, classrooms, and offices in the area north and west of the hangars would be retained and used as a conference and training center for private entities occupying buildings on the property. West of this conference and training center, the property that presently includes the Cecil Field golf course, Lake Fretwell, and Lake Newman would be maintained as a recreational area. This Alternative also proposed to build light industrial facilities on property located west of the recreational area that the Preferred Alternative would maintain as forest land.

North of the heavy industrial area, on the southern side of Normandy Boulevard, ARS 4 would build commercial facilities such as retail stores, banks and credit unions, and a United States Post Office. East of this commercial area and north of the aviation facilities, ARS 4 would build new light industrial facilities.

In the center of the Yellow Water Weapons Area, ARS 4 proposed to build a 1,439-acre State Corrections Facility and a 126-acre State Juvenile Justice Facility. In the eastern half of the Yellow Water Weapons Area, ARS 4 proposed to build heavy and light industrial facilities. In the northwest corner, this Alternative would maintain the undeveloped forest land. On the western side and in the southwest corner, it would provide a park and recreational area. On the southern edge of the property, along Normandy Boulevard, ARS 4 would build facilities for commercial activities like those proposed for the Main Station.

Environmental Impacts: Navy analyzed the direct, indirect, and cumulative impacts of the disposal and reuse of this surplus Federal property. The EIS addressed the impacts of the Preferred Alternative, ARS 1 through ARS 4, and the ''No Action'' Alternative for each alternative's effects on land use and aesthetics, topography, geology and soils, terrestrial resources, water quality and hydrology, climate and air quality, noise, socioeconomics and community services, transportation, infrastructure and utilities, cultural resources, and hazardous materials management and environmental contamination. This Record Of Decision focuses on the impacts that would likely result from implementation of the Reuse Plan, identified in the FEIS as the Preferred Alternative.

The Preferred Alternative would not have any significant impact on land use. While many areas at NAS Cecil Field are constrained by features such as wetlands and wildlife habitats, there are also large areas of land that are not restricted and could reasonably support new development. An area of about 29 million square feet could be developed without adversely affecting environmentally sensitive features such as wetlands, wildlife habitat, environmental cleanup sites, the 100-year floodplain, and archaeologically sensitive areas. Thus, the 3.9 million square feet of new development proposed by the Reuse Plan would not have an impact on land use.

The land uses proposed in the Preferred Alternative would be generally compatible with each other. While the proposed heavy industrial areas are not consistent with the adjacent parks and recreational areas, the establishment of buffer zones between these activities would minimize any such impact.

The land uses proposed in the Preferred Alternative would also be generally compatible with adjacent off-base land uses. Although the light industrial area in the eastern half of the Yellow Water property would be adjacent to private property currently zoned for low density residential and commercial land uses, the establishment of buffer zones between these incompatible uses would minimize any such impact.

The Preferred Alternative would not have any significant impact on aesthetic resources because it would not alter the overall aesthetic character of NAS Cecil Field. Indeed, the Reuse Plan calls for the removal of structures and utilities that would not be used and the preservation of existing positive visual features such as the tall pine trees that constitute the dominant aesthetic characteristic of the undeveloped areas.

The Preferred Alternative would not have any significant impact on soils and would not have any impact on local or regional geological resources or topography. Disturbance of soils by compaction, rutting, and erosion would be limited to those areas that would be redeveloped. These impacts would be temporary and can be minimized during construction by the use of standard soil erosion and sedimentation control measures such as the use of the hay bales and silt fences.

The Preferred Alternative would not have any significant impact on upland vegetation and wildlife. Although the proposed construction would result in some loss of vegetation and associated wildlife habitat, these impacts would be limited to the areas under construction. They can be minimized by retaining surrounding native vegetation and maintaining connections between habitats. The Natural and Recreation corridor will provide protection for most of the wildlife habitat.

The Preferred Alternative would not have any significant impact on wetland vegetation and wildlife. The non-wetland areas available for redevelopment can accommodate the proposed new construction without encroaching on existing wetlands. Most of the existing wetlands are located in the northwest corner of the Yellow Water Weapons Area, which would be maintained as forest land and placed in the Natural and Recreation Corridor. Another large area of wetlands located on the Main Station in the forest land east of the runways would be reserved for future airport expansion. Further redevelopment plans that may affect wetlands would be subject to the regulations that implement Section 404 of the Clean Water Act, 33 U.S.C. 1344 (1994). These regulations are set forth at 33 CFR Part 323 and are enforced by the United States Army Corps of Engineers.

The Preferred Alternative would not have any significant impact on endangered, threatened, or other species protected under Federal and State laws. Pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), 16 U.S.C. 1536 (1994), Navy conducted a biological assessment to determine the presence of Federally-listed endangered and threatened species. Although not required by Section 7 of ESA, Navy also included in this assessment those species that are identified as endangered, threatened, or of concern under Florida law.

No Federally-listed endangered or threatened species were found to be present at NAS Cecil Field. The assessment demonstrated, however, that the base provides suitable habitat for one mammal, three birds, five reptiles and amphibians, and nine plant species that are either endangered, threatened, or otherwise protected under Federal and State laws. The habitats suitable for 13 of these 18 species are located in wetlands that would be avoided during implementation of the Preferred Alternative. As discussed earlier, the impact on habitats would be limited to the particular areas under construction and can be mimized by retaining surrounding native vegetation and maintaining connections between habitats.

Based upon the findings of the biological assessment, Navy determined that the disposal and reuse of Cecil Field would not have any adverse effect on Federally-listed endangered or threatened species. In a letter dated August 20, 1998, the United States Fish And Wildlife Service concurred in Navy's determination.

Additionally, the City of Jacksonville amended the Jacksonville 2010 Comprehensive Plan to require a survey that would ascertain the presence of Federally and State-listed species in all areas proposed for redevelopment. This Plan is the local development plan required by Florida law to ensure that future development is consistent with the long range goals, objectives, and policies guiding social, economic, and physical growth of the State. Fla. Stat. §§ 163.3161–3244 (1997). If the survey reveals the presence of Federally or State-listed species, the City will require the developer to prepare a habitat management plan that describes the manner in which the Federally or State-listed species will be protected from the impacts of the proposed redevelopment.

The Preferred Alternative would not have any significant impact on water quality. The closure of Cecil Field's wastewater treatment plant and replacement by the City of Jacksonville's wastewater system would improve water quality by eliminating the treated discharge that previously flowed into Rowell Creek. However, stormwater discharges from new industrial activities, roadways and parking areas and from routine operations and maintenance in the developed areas (such as the application of herbicides and pesticides) could have adverse impacts on the surface water quality of Rowell Creek, Sal Taylor Creek, Yellow Water Creek, Lake Fretwell, and Lake Newman. In accordance with Federal, State, and local laws and regulations, the acquiring entities will implement stormwater management practices to minimize these potential impacts.

The Preferred Alternative would not have any significant impact on the availability or quality of groundwater. The groundwater under NAS Cecil Field does not contribute to the Floridian Aquifer, which is the main source of drinking water for Duval County.

The Preferred Alternative would not have any significant impact on surface water hydrology. There would be no realignment of streams or physical alternation of wetlands during construction, other than alterations that would enhance the wetlands system in the Corridor.

The Preferred Alternative would not have any significant impact on local or regional climatic conditions. The regional climate would not change as a result of implementing the proposed Reuse Plan.

The Preferred Alternative would not have any significant impact on air quality. The base is located in an ozone maintenance area, which is defined by the Clean Air Act, 42 U.S.C. 7401–7671q (1994), as a transition between non-attainment and attainment status for common air pollutants. The base is in attainment for all other common air pollutants. Ozone, commonly known as smog, is produced when volatile organic compounds and nitrogen oxides react in the atmosphere, and emissions of these pollutants would decrease under the Reuse Plan. However, emissions of two other common air pollutants, carbon monoxide and small particulate matter, may increase under the Reuse Plan.

Carbon monoxide is produced by the burning of fossil fuels. Compared with pre-closure levels, the Reuse Plan projects that annual emissions of carbon monoxide would increase by 407 tons, largely as the result of increased vehicular traffic moving to and from the property. This constitutes an insignificant increase in carbon monoxide emissions (less than 0.2 percent) in the Jacksonville area.

Small particulate matter is caused by activities that generate smoke and dust. Emissions from particulate matter would temporarily increase from 25 to 107 tons per year as the result of construction activities. Developers of future facilities would be responsible for obtaining the required air permits and complying with Federal, State, and local laws and regulations governing air

pollution. These regulations prescribe pre-construction review; impose emission and control technology standards; and require construction and operating permits.

Section 176(c) of the Clean Air Act, 42 U.S.C. 7506 (1994), requires Federal agencies to review their proposed activities to ensure that these activities do not hamper local efforts to control air pollution. Section 176(c) prohibits Federal agencies from conducting activities in air quality areas, such as Jacksonville, that are in maintenance status for one or more of the national standards for ambient air quality, unless the proposed activities conform to an approved implementation plan. The United States Environmental Protection Agency regulations implementing Section 176(c) recognize certain categorically exempt activities. Conveyance of title to real property and certain leases are categorically exempt activities. 40 CFR 93.153(c)(2)(xiv) and (xix). Therefore, the disposal of NAS Cecil Field will not require Navy to conduct a conformity determination.

The Preferred Alternative would not have any significant impact on noise. Exposure to noise from aircraft operations would be substantially less than when the Air Station was operating. This decrease results from the reduction from 175,168 annual jet aircraft operations before closure of the Air Station to 50,000 annual jet aircraft operations proposed under the Preferred Alternative. In addition, the aircraft that would use the airfield under the Preferred Alternative would make less noise than the Navy aircraft such as the F/A–18 jets that currently operate at NAS Cecil Field.

During reuse, a gradual increase in ambient noise levels from other sources would likely occur. This increase would arise out of industrial operations, traffic, and the operation of heavy equipment during construction. The absence of any nearby concentrations of sensitive noise receptors such as residences, hospitals and churches would minimize the impact of this gradual increase in ambient noise.

The Preferred Alternative would have minor impacts on the population and demographics of Duval County and Clay County. The proposed redevelopment would increase employment opportunities, but recruitment of employees from outside local counties is not likely because the demand for new employees would be gradual. Therefore, it is unlikely that there would be an increase in the local population as a result of implementing the Preferred Alternative.

The Preferred Alternative is projected to create 3,199 direct jobs and 3,528 indirect jobs that would generate about $78 million in direct payroll earnings and $67 million in indirect earnings. The total assessed value of taxable property after the redevelopment of Cecil Field would reach nearly $100 million. As a result, the Preferred Alternative would generate an estimated $2.16 million in annual property tax revenues.

The Preferred Alternative would have no significant impact on local and regional housing markets and would have positive impacts on local school systems. There would be fewer school age children residing in the area than when NAS Cecil Field was an active base, and property tax revenues that support local school systems would increase as property previously owned by the Federal Government became taxable.

The Preferred Alternative could have minor adverse impacts on police, fire, and emergency services in the City of Jacksonville. The conveyance of NAS Cecil Field from Navy ownership would increase the geographic area served by local police, fire, and ambulance units. Consequently, manpower and equipment requirements would increase. The equipment requirements, however, could be offset by conveyance of the base's public safety buildings and equipment such as police stations, firehouses, and certain vehicles to the City of Jacksonville. Additionally, implementation of the Preferred Alternative would increase local government revenues by expanding the property tax base.

The Preferred Alternative would increase the number of recreational facilities in the Jacksonville area. Under the Preferred Alternative, the Cecil Field golf course, Lake Fretwell, Lake Newman, and most of the base's athletic fields and other recreational areas and facilities would be made available to the public. The remaining athletic fields, located in that part of the Main Station proposed for heavy industrial activities, would not be used for recreational purposes.

The Preferred Alternative would not have any significant impact on transportation. By the year 2010, there would be about 24,359 average daily trips. This constitutes an increase of about 10,000 average daily trips over the conditions that prevailed when the base was active. The roadways that would experience traffic increases would be Chaffee Road, Normandy Boulevard, and 103rd Street. These increases would likely occur between the years 1999 and 2010 and would be addressed by improvements to the regional roadway network planned by the City of Jacksonville and the State of Florida.

After NAS Cecil Field closes, the current mass transit service may be canceled or limited because of insufficient ridership. Future mass transit service to the Cecil Field property would likely be based upon the demand for such service.

The Preferred Alternative would have minor adverse impacts on utilities. While the Reuse Plan proposes to make extensive improvements to the existing water and sewer systems, these improvements would likely be made in the course of new construction.

The Preferred Alternative proposed to connect NAS Cecil Field's water distribution and sewage collection systems to the City of Jacksonville's systems. After closure of the base, stormwater management would remain subject to Federal, State, and local laws and regulations. The acquiring entity and/or the developers of the property would be responsible for installing adequate drainage facilities.

The long term demand for natural gas would require expansion of the existing natural gas distribution system to serve the redeveloped areas. The existing 16-inch gas transmission line, located at the entrance to the Air Station, is adequate to accommodate the increased demand likely to occur under the Preferred Alternative.

The long term demand for electrical power would require expansion of the existing electrical distribution system to serve the redeveloped areas. It would be necessary to upgrade the existing distribution system to meet the local electrical authority's standards for electric meters in order properly to charge customers for electric utility service.

Under the Preferred Alternative, the existing centralized steam generation plant and the aboveground steam lines would not be used. Instead, auxiliary boilers served by existing natural gas lines may be used, and other electric or gas heating systems may be installed.

Implementation of the Preferred Alternative would not have any significant impact on the management of solid waste. When fully implemented, the Preferred Alternative would generate about 150,000 tons of solid waste annually. This constitutes a 50 percent reduction in the amount of solid waste compared with the amount generated before closure of the base.

The Preferred Alternative would not have any significant impact on cultural resources. Pursuant to Section 106 of the National Historic Preservation Act of 1988, 16 U.S.C. 470f (1994), Navy

conducted a cultural resource assessment of NAS Cecil Field. Navy evaluated all of the buildings and structures at Cecil Field and determined that none was eligible for listing on the National Register of Historic Places. In a letter dated October 9, 1996, the Florida State Historic Preservation Officer (SHPO) concurred in the Navy's determination.

There are no known archaeological sites at NAS Cecil Field. However, the cultural resource assessment identified 15 archaeologically sensitive areas in certain parts of NAS Cecil Field that are on the surplus Federal property. Thirteen archaeologically sensitive areas are located in parts of the Main Station and the Yellow Water Weapons Area that would be used for conservation, forestry, parks and recreational activities. Two archaeologically sensitive areas are located on that part of the Yellow Water Weapons Area where light industrial facilities would be built. Depending upon the location and design of particular redevelopment projects, these two archaeologically sensitive areas could be adversely affected by construction activities.

Navy has completed consultation pursuant to Section 106 of the National Historic Preservation Act with the Advisory Council on Historic Preservation and the Florida State Historic Preservation Officer. These consultations identified measures that the acquiring entities must take to avoid or mitigate adverse effects on the archaeologically sensitive areas. The measures are set forth in a Programmatic Agreement entered into by Navy, the Advisory Council on Historic Preservation, and the Florida State Historic Preservation Officer, dated January 22, 1997. This Programmatic Agreement requires recipients of the property to obtain written permission from the SHPO before undertaking any activities that would disturb the ground at these 15 archaeologically sensitive areas.

The Preferred Alternative would not have any significant impact on the management of hazardous materials and hazardous waste. The quantity of hazardous materials used, stored, and disposed of, and the quantity of hazardous waste generated on the property would be less under the Preferred Alternative than during Navy's use of the Cecil Field property. Hazardous materials used and hazardous waste generated under the Preferred Alternative will be managed in accordance with Federal and State laws and regulations.

Implementation of the Preferred Alternative would not have any impact on existing environmental contamination at NAS Cecil Field. Navy will inform future property owners about the environmental condition of the property and may, where appropriate, include restrictions, notifications, or covenants in deeds to ensure the protection of human health and the environment in light of the intended use of the property.

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 3 CFR 859 (1995), requires that Navy determine whether any low-income and minority populations will experience disproportionately high and adverse human health or environmental effects from the proposed action. Navy analyzed the impacts on low-income and minority populations pursuant to Executive Order 12898. The FEIS addressed the potential environmental, social, and economic impacts associated with the disposal of NAS Cecil Field and subsequent reuse of the property under the various proposed reuse scenarios. Minority and low-income populations residing within the region will not be disproportionately affected.

Navy also analyzed the impacts on children pursuant to Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, 3 CFR 198 (1998). Under the Preferred Alternative, the largest concentration of children would be present in the recreational areas. The Preferred Alternative would not impose any disproporationate environmental health of safety risks on children.

Mitigation: Implementation of Navy's decision to dispose of NAS Cecil Field does not require Navy to implement any mitigation measures. Navy will take certain actions to implement existing agreements and regulations. These actions were treated in the FEIS as agreements or regulatory requirements rather than as mitigation.

The FEIS identified and discussed those actions that will be necessary to mitigate impacts associated with the reuse and redevelopment of NAS Cecil Field. The acquiring entitites, under the direction of Federal, State, and local agencies with regulatory authority over protection resources, will be responsible for implementing necessary mitigation measures.

Comments Received on the FEIS: Navy received comments on the FEIS from the United States Environmental Protection Agency, the Federal Aviation Administration, and the Florida Department of Community Affairs. These comments concerned issues already discussed in the FEIS and do not require further clarification.

Regulations Governing the Disposal Decision: Since the proposed action contemplates a disposal under the Defense Base Closure and Realignment Act of 1990 (DBCRA), Public Law 101–510, 10 U.S.C. 2687 note (1994), Navy's decision was based upon the environmental analysis in the FEIS and application of the standards set forth in the DBCRA, the Federal Property Management Regulations (FPMR), 41 CFR Part 101–47, and the Department of Defense Rule on Revitalizing Base Closure Communities and Community Assistance (DoD Rule), 32 CFR Parts 174 and 175.

Section 101–47.303–1 of the FPMR requires that disposals of Federal property benefit the Federal Government and constitute the ''highest and best use'' of the property. Section 101–47.4909 of the FPMR defines the ''highest and best use'' as that use to which a property can be put that produces the highest monetary return from the property, promotes its maximum value, or serves a public or institutional purpose. The ''highest and best use'' determination must be based upon the property's economic potential, qualitative values inherent in the property, and utilization factors affecting land use such as zoning, physical characteristics, other private and public uses in the vicinity, neighboring improvements, utility services, access, roads, location, and environmental and historic considerations.

After Federal property has been conveyed to non-Federal entities, the property is subject to local land use regulations, including zoning and subdivision regulations, and building codes. Unless expressly authorized by statute, the disposing Federal agency cannot restrict the future use of surplus Government property. As a result, the local community exercises substantial control over future use of the property. For this reason, local land use plans and zoning affect determination of the ''highest and best use'' of surplus Government property.

The DBCRA directed the Administrator of the General Services Administration (GSA) to delegate to the Secretary of Defense authority to transfer and dispose of base closure property. Section 2905(b) of the DBCRA directs the Secretary of Defense to exercise this authority in accordance with GSA's property disposal regulations, set forth in Part 101–47 of the FPMR. By letter dated December 20, 1991, the Secretary of Defense delegated the authority to transfer and dispose of

base closure property closed under the DBCRA to the Secretaries of the Military Departments. Under this delegation of authority, the Secretary of the Navy must follow FPMR procedures for screening and disposing of real property when implementing base closures. Only where Congress has expressly provided additional authority for disposing of base closure property, *e.g.*, the economic development conveyance authority established in 1993 by Section 2905(b)(4) of the DBCRA, may Navy apply disposal procedures other than those in the FPMR.

In Section 2901 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103–160, Congress recognized the economic hardship occasioned by base closures, the Federal interest in facilitating economic recovery of base closure communities, and the need to identify and implement reuse and redevelopment of property at closing installations. In Section 2903(c) of Public Law 103–160, Congress directed the Military Departments to consider each base closure community's economic needs and priorities in the property disposal process. Under Section 2905(b)(2)(E) of the DBCRA, Navy must consult with local communities before it disposes of base closure property and must consider local plans developed for reuse and redevelopment of the surplus Federal property.

The Department of Defense's goal, as set forth in Section 174.4 of the DoD Rule, is to help base closure communities achieve rapid economic recovery through expeditious reuse and redevelopment of the assets at closing bases, taking into consideration local market conditions and locally developed reuse plans. Thus, the Department has adopted a consultative approach with each community to ensure that property disposal decisions consider the LRA's reuse plan and encourage job creation. As a part of this cooperative approach, the base closure community's interests, as reflected in its zoning for the area, play a significant role in determining the range of alternatives considered in the environmental analysis for property disposal. Furthermore, Section 175.7(d)(3) of the DoD Rule provides that the LRA's plan generally will be used as the basis for the proposed disposal action.

The Federal Property and Administrative Services Act of 1949, 40 U.S.C. 484 (1994), as implemented by the FPMR, identifies several mechanisms for disposing of surplus base closure property: by public benefit conveyance (FPMR Sec. 101–47.303–2); by negotiated sale (FPMR Sec. 101–47.304–9); and by competitive sale (FPMR 101–47.304–7). Additionally, in Section 2905(b)(4), the DBCRA established economic development conveyances as a means of disposing of surplus base closure property. The selection of any particular method of conveyance merely implements the Federal agency's decision to dispose of the property. Decisions concerning whether to undertake a public benefit conveyance or an economic development conveyance, or to sell property by negotiation or by competitive bid, are left to the Federal agency's discretion. Selecting a method of disposal implicates a broad range of factors and rests solely within the Secretary of the Navy's discretion.

Conclusion: The LRA's proposed reuse of NAS Cecil Field, reflected in the Reuse Plan, is consistent with the requirements of the FPMR and Section 174.4 of the DoD Rule. The LRA has determined in its Reuse Plan that the property should be used for several purposes, including aviation, industrial, commercial, forestry, conservation, parks and recreation. The property's location, physical characteristics, and existing infrastructure as well as the current uses of adjacent property make it appropriate for the proposed uses.

The Preferred Alternative responds to local economic conditions, promotes rapid economic recovery from the impact of the Air Station's closure, and is consistent with President Clinton's Five-Part Plan for Revitalizing Base Closure Communities, which emphasizes local economic redevelopment and creation of new jobs as the means to revitalize these communities. 32 CFR Parts 174 and 175, 59 FR 16123 (1994).

Although the ''No Action'' Alternative has less potential for causing adverse environmental impacts, this Alternative would not take advantage of the property's location, physical characteristics, and infrastructure or the current uses of adjacent property. Additionally, it would not foster local economic redevelopment of the Cecil Field property.

The acquiring entities, under the direction of Federal, State, and local agencies with regulatory authority over protected resources, will be responsible for adopting practicable means to avoid or minimize environmental harm that may result from implementing the Reuse Plan.

Accordingly, Navy will dispose of Naval Air Station Cecil Field in a manner that is consistent with the City of Jacksonville's Reuse Plan for the property.

Dated: May 19, 1999.

William J. Cassidy, Jr.,

Deputy Assistant Secretary of the Navy (Conversion and Redevelopment).

[FR Doc. 99–14005 Filed 6–2–99; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Chief of Naval Operations (CNO) Executive Panel

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The CNO Executive Panel is meeting to conduct the final briefing of the Homeland Defense Task Force to the Chief of Naval Operations. This meeting will consist of discussions relating to proposed Navy involvement in Homeland Defense.

DATES: The meeting will be held on June 23, 1999 from 11 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at the office of the Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONCERNING THIS MEETING CONTACT: Commander Christopher Agan, CNO Executive Panel, 4401 Ford Avenue, Suite 601, Alexandria, Virginia 22302–0268, telephone number (703) 681–6205.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

Dated: May 18, 1999.

Ralph W. Corey,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 99–13990 Filed 6–2–99; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Chief of Naval Operations (CNO) Executive Panel

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The CNO Executive Panel is meeting to conduct the final briefing of the Space and Information Warfare Task Force to the Chief of Naval Operations. This meeting will consist of discussions relating to proposed Navy involvement in Space and Information Warfare.

DATES: The meeting will be held on June 16, 1999 from 9 a.m. to 10 a.m.

ADDRESSES: The meeting will be held at the office of the Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONCERNING THIS MEETING CONTACT: Commander Christopher Agan, CNO Executive Panel, 4401 Ford Avenue, Suite 601, Alexandria, Virginia 22302–0268, (703) 681–6205.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

Dated: May 18, 1999.

Ralph W. Corey,

Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Office.

[FR Doc. 99–13991 Filed 6–2–99; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 2, 1999.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address Pat—Sherrill@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 27, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: New.

Title: Local Education Agency Component of Study of School Violence and Prevention.

Frequency: Two one time reportings.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAS.

Reporting and Recordkeeping Hour Burden:

Responses: 204.

Burden Hours: 250.

Abstract: The purpose of this study is to increase understanding of how local education agencies plan, implement, and evaluate their alcohol, tobacco and other drugs (ATOD) and violence prevention efforts, especially efforts funded under the Safe and Drug-Free Schools and Communities Act. This study also will assess the implementation of the Principles of Effectiveness, and document obstacles or barriers to implementation of the principles.

[FR Doc. 99–14000 Filed 6–2–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy; Office of Geothermal Technologies

Enhanced Geothermal Systems Project

AGENCY: Department of Energy (DOE).

ACTION: Notice of program interest (NOPI).

SUMMARY: This project will provide for the Enhanced Geothermal Systems (EGS) Program Development and operation of an Enhanced Geothermal System to augment the power production of a current geothermal field. DOE/AL is soliciting comments and expressions of interest in developing a cost-shared, industry-led project to develop an EGS to significantly augment the electric power production of an existing geothermal field.

DATES: Statements of interest are due on or before July 19, 1999.

ADDRESSES: Statements of interest should be sent to the following address: Department of Energy, Attn: D. A. Sanchez, Albuquerque Operations Office/TDD, P. O. Box 5400, Albuquerque, NM 87185–5400.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Grabowski, U.S. Department of Energy, EE–12, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0478, paul.grabowski@hq.doe.gov. Mr. Lynn McLarty, Princeton Economic Research Inc, Rockville, MD, (301) 468–8442, lmclarty@perihq.com. Mr. Dan Sanchez, DOE/AL, P.O. Box 5400, Albuquerque, NM 87185–5400, (505) 845–4417, dsanchez@doeal.gov.

SUPPLEMENTARY INFORMATION: Exploitable geothermal energy resources are found in many parts of the U.S., and the world. Often within the boundaries of these known fields, or at the margins of these fields, there often exist regions that contain sufficient heat but lack permeability, fluid content, or both. Research has indicated that it may be possible to utilize these regions to enhance operating geothermal fields, or possibly create new adjacent reservoirs, and thereby increase the power produced from the existing field with an EGS. Also, research at Los Alamos National Laboratory's Fenton Hill site has shown that a stand-alone geothermal reservoir (non-EGS) can be created in low-permeability, hot rock with no resident fluid, although this has not yet proven to be a commercially viable source of electricity. Based on these U.S. research results, and the results of several overseas projects, the U.S. DOE believes a domestic EGS can be co-developed with US industry, and eventually be commercially competitive.

The purpose of this notice is to obtain a preliminary indication of interest by utilities, independent power producers, or industrial concerns in cost-sharing the development and operation of a domestic EGS that significantly augments the electric power production from an existing geothermal field. Comments are solicited from independent power producers, utilities, energy companies, well drilling and well servicing companies, turbine manufacturers and other businesses with an interest in the development of geothermal energy resources. This notice is only intended to: decide whether to proceed with a solicitation; refine the specifications of the solicitation (currently in development); identify potential bidders; promote the formation of partnerships or consortia; and stimulate interactions among potential participants. At some future date, if a solicitation for this project is issued, industry will be invited to specify a site for the project, the size and scope of the EGS, a plan for the construction of the EGS, and the customers to whom the electric power or thermal energy will be sold. DOE expects that the amount of additional power gained from this EGS project will be on the order of 5–10% above the electricity generating capacity of the original existing field. The plant and its revenue will be the property of the successful bidder(s). A portion of the cost-sharing, generally that in excess of 40%, may include an accounting of in-kind cost participation, equipment or services. The federal government's share of any project will be limited to approximately $60 million over a period covering the construction of the facility and up to two years of operations. DOE will exercise appropriate oversight authority, but the day-to-day management of the project will be the responsibility of the offeror.

DOE, through its AL office, requests comments and expressions of interest in order to determine the level of interest by private parties in the proposed project to build and operate an EGS in an existing geothermal field. Moreover, the requested information will help the DOE to decide whether to issue a solicitation, refine the specifications of the solicitation, and identify potential bidders. Comments, suggested modifications, additions, deletions or alternative approaches are encouraged and welcome. Proprietary details of responses should be identified and will be kept in confidence. Failure to respond to this notice will not disqualify any party from responding to any subsequent solicitation, but a response will assure that the party receives the solicitation and notification of related activities. Expressions of interest should not include detailed plans or proposals but should include the following: (1) The name, address, telephone number, Email address, and facsimile number of the primary contact person; (2) The potential participants, their affiliations, their proposed roles, and brief documentation of their interest in the project; and (3) a statement indicating whether or not the respondent wishes to receive a copy of the solicitation. Responses to this notice should not exceed five pages in length exclusive of appendices. Responses shall be sent to the attention of Mr. Dan Sanchez at the address listed above.

Copies of the Geothermex, Inc. ''Data Review'' and ''Peer Review'' reports on the Fenton Hill Hot Dry Rock project are available to aid parties in deciding their level of interest. Copies of these reports are available from Princeton Economic Research, Incorporated. Contact Mr. Lynn Mclarty at 301–468–8442. Copies of status reports of the European Hot Dry Rock Project are available from Roy Baria, or Jorg Baumgartner, SOCOMINE Soultz-Sous-Foret, France, 33–8880–5363.

Issued in Albuquerque, N.M. on May 25, 1999.

D.A. Sanchez,

Technology Development Division.

[FR Doc. 99–14076 Filed 6–2–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–2229–000]

California Power Exchange Corp; Issuance of Order

May 28, 1999.

California Power Exchange Corporation (PX), on behalf of a soon-to-be established division, CalPX Trading Services (CTS), filed a proposal to establish a ''Block-Forward Market'' for the sales and purchases of energy for delivery through the PX Day-Ahead Market, to become effective on the date that CTS operations commence. The filing requests market-based rate treatment for the Block-Forward Market. On behalf of CTS, the PX also requested authorizations and waivers of various Commission regulations, consistent with those granted other various marketers. In particular, the proposal requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liabilities by CTS. On May 26, 1999, the Commission issued an Order Accepting For Filing Proposed Block-Forward Market, As Modified (Order), in the above-docketed proceeding.

The Commission's May 26, 1999 Order granted the request for blanket approval under part 34, subject to the conditions found in Ordering Paragraphs (G), (H), and (I):

(G) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by CTS should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure, 18 CFR 385.211 and 385.214.

(H) Absent a request to be heard within the period set forth in Ordering Paragraph (G) above, CTS is hereby authorized to issue securities and

assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of CTS, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(I) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of CTS's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 25, 1999.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14029 Filed 6–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3045–000]

Cambridge Electric Light Co.; Notice of Filing

May 27, 1999.

Take notice that on May 19, 1999, Cambridge Electric Light Company (Cambridge) tendered for filing a non-firm point-to-point transmission service agreement between Cambridge and Strategic Energy Ltd. (Strategic). Cambridge states that the service agreement sets out the transmission arrangements under which Cambridge will provide non-firm point-to-point transmission service to Strategic under Cambridge's open access transmission tariff accepted for filing in Docket No. ER97–1337–000, subject to refund and issuance of further orders.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 8, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14020 Filed 6–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3044–000]

Commonwealth Electric Co.; Filing

May 27, 1999.

Take notice that on May 19, 1999, Commonwealth Electric Company (Commonwealth) tendered for filing a non-firm point-to-point transmission service agreement between Commonwealth and Strategic Energy Ltd. (Strategic). Commonwealth states that the service agreement sets out the transmission arrangements under which Commonwealth will provide non-firm point-to-point transmission service to Strategic under Commonwealth's open access transmission tariff accepted for filing in Docket No. ER97–1341–000, subject to refund and issuance of further orders.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 8, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14019 Filed 6–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–117–000]

K N Interstate Gas Transmission, Co.; Informal Settlement Conference

May 27, 1999.

Take notice that an informal settlement conference in this proceeding will be convened on Wednesday, June 9, 1999, at 1:30 p.m. and will continue on Thursday, June 10, 1999. The settlement conference will be held at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Thomas J. Burgess at (202) 208–2058 or Marcia C. Hooks at (202) 208–0993.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14013 Filed 6–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER–99–2931–000]

New England Power Pool; Filing

May 27, 1999.

Take notice that on May 14, 1999, New England Power Pool (NEPOOL) Executive Committee submitted Market Rules and Procedures recently approved by the NEPOOL Regional Market Operations Committee. This filing places before the Commission, revisions to NEPOOL's existing set of Market Rules and appendices to those rules. NEPOOL has requested that a limited number of changes to Market Rule 4.3.1, Appendix 5–B and Appendix 12–B–3 be allowed to become effective as of the date of filing.

The NEPOOL Executive Committee states that copies of these materials were sent to all participants in the New England Power Pool and the New England state governors and regulatory commissions.

Any person desiring to be heard or to protest such filing should file a motion

to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 7, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14018 Filed 6–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–2469–000]

Newport Electric Corp.; Filing

May 27, 1999.

Take notice that on May 14, 1999, Newport Electric Corporation filed an amendment to Appendix C which was attached to their Agreement for Support of Certain Transmission Facilities that was field with the Commission on April 13, 1999.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 7, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14017 Filed 6–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–310–000]

Southern Natural Gas Co.; Notice of Petition for Waiver

May 27, 1999.

Take notice that on May 24, 1999, Southern Natural Gas Company (Southern) filed a petition for an interim waiver of § 14.1(b)(1) and 14.1(c)(1) of the General Terms and Conditions of its Tariff in order to waive cashout premiums incurred during April 1999.

Southern states that copies of the filing have been mailed to all of the shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with §§ 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before June 3, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. 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. 99–14015 Filed 6–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–166–003]

Stingray Pipeline Co.; Motion To Make Tariff Sheet Effective

May 27, 1999.

Take notice that on May 24, 1999, Stingray Pipeline Company (Stingray) filed a Motion to Make Suspended Tariff Sheet Effective (Motion). Stingray moved to make effective on June 1, 1999, Tenth Revised Sheet No. 5. The rates on Tenth Revised Sheet No. 5 reflect the effect of removing the line pack gas surcharge from the rate levels Stingray originally filed in this proceeding on December 1, 1998.

Stingray requested waiver of any applicable Commission Regulations and orders to the extent necessary to permit Tenth Revised Sheet No. 5 to become effective on June 1, 1999.

Stingray states that copies of the Motion, together with Tenth Revised Sheet No. 5, are being served on Stingray's customers, interested state regulatory agencies, and all parties set out on the official service list at Docket No. RP99–166.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's rules and regulations. All such protests must be filed on or before June 3, 1999. 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. 99–14014 Filed 6–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP98–739–001 and CP99–90–001]

Tennessee Gas Pipeline Co.; Compliance Filing

May 27, 1999.

Take notice that on May 17, 1999, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, a Fifth Revised Sheet No. 181. Tennessee also tendered for filing and acceptance: (1) A Firm Natural Gas Transportation Agreement dated May 1, 1999, between Tennessee and USGen New England, Inc. (USGenNE) for 53,000 Dth/day of transportation service under Rate Schedule NET; and (2) a

Termination Agreement dated May 1, 1999, between Tennessee and New England Power Company (NEPCO) terminating 53,000 Dth/day of transportation service under Rate Schedule NET.

Tennessee states that this filing is in compliance with the Commission's March 11, 1999 order issued in Docket Nos. CP98–739–000 and CP99–90–000. Tennessee explains that, through this filing it seeks to implement the assumption by USGenNE of NEPCO's rights and obligations for 53,000 Dth/day of transportation service under Rate Schedule NET, as authorized in the March 11 order. Tennessee requests an effective date of May 1, 1999.

Any person desiring to be heard or to make any protest with reference to said filing should on or before June 11, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14022 Filed 6–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–531–000]

Tennessee Gas Pipeline Co.; Application for Abandonment

May 27, 1999.

Take notice that on May 21, 1999, Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana Street, PO Box 2511, Houston, Texas 77252–2511, filed in Docket No. CP99–531–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the natural gas transportation service which Tennessee provides to Natural Gas Pipeline Company of America (Natural) all as more fully set forth in the request that is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–0400 for assistance).

Tennessee proposes to abandon the natural gas service which Tennessee provides to Natural under Tennessee's Rate Schedule T–159. Tennessee states that Natural no longer requires this transportation service and both parties have mutually agreed to the abandonment of such service.

Any person desiring to be heard or to make any protest with reference to said application should, on or before June 17, 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 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, or if the Commission on its own review of the matter finds that permission and approval for the proposed certificate and abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Tennessee to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14024 Filed 6–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–015]

Tennessee Gas Pipeline Co.; Negotiated Rate Filing

May 27, 1999.

Take notice that on May 24, 1999, Tennessee Gas Pipeline Company (Tennessee) tendered for filing a Negotiated Rate Arrangement. Tennessee requests that the Commission approve the Negotiated Rate Arrangement effective June 1, 1999.

Tennessee states that the filed Negotiated Rate Arrangement reflects a negotiated rate between Tennessee and Exxon Corporation (Exxon) for transportation under Rate Schedule FT–A beginning the later of June 1, 1999 or the in-service date of the Venice Interconnect (Tennessee's Meter Number 012516) for a twenty-four month period.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's rules and regulations. All such protests must be filed on or before June 3, 1999. 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. 99–14027 Filed 6–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG99–12–001]

Total Peaking Services, L.L.C.; Filing

May 27, 1999.

Take notice that on May 19, 1999, Total Peaking Services, L.L.C. (Total Peaking) filed revised standards of conduct in response to the Commission's April 19, 1999 Order on Standards of Conduct. 87 FERC ¶ 61,092 (1999).

Total Peaking states that it served copies of the filing on all parties in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, in accordance with Rules 211 or 214 of the Commission's rules of practice and procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before June 11, 1999. 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. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14026 Filed 6–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–534–000]

Transwestern Pipeline Co.; Application

May 27, 1999.

Take notice that on May 21, 1999, Transwestern Pipeline Company (Transwestern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP99–534–000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon by removal, Unit #3 and appurtenant facilities, located at its Station 8 compressor station in Lincoln County, New Mexico. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

Transwestern states that the Station 8 compressor station consists of 3 compressor units totalling 14,500 horsepower. Northern proposes to abandon, by removal, compressor unit #3 totaling 6,500 horsepower. Transwestern states that Unit #3 is no longer required due to changes in operating conditions which have eliminated the need for this unit. Transwestern further states that as a result of the abandonment, Station 8 will have a lower discharge pressure; however, the compression at Stations 1–4 will be able to meet the firm transportation requirements as a result of 199 miles of 30-inch mainline looping which was installed in 1992 under Docket No. CP90–2294, *et al.* Transwestern maintains that the abandonment of Unit #3 at Station 8 will not result in the abandonment of service to any of Transwestern's existing customers or producers, nor will it adversely affect capacity since the compression is no longer required by Transwestern to meet the firm transportation requirements.

Transwestern states that it will use the removed Unit #3, or parts of the unit, at other locations on its transmission system as needed or salvage the unit as applicable. Transwestern estimates the cost of removal to be $310,000.

Any person desiring to be heard or to make any protests with reference to said application should on or before June 17, 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 permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transwestern to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc 99–14025 Filed 6–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–52–031]

Williams Gas Pipelines Central, Inc.; Filing of Refund Report

May 27, 1999.

Take notice that on May 21, 1999, Williams Gas Pipelines Central, Inc. (Williams) tendered for filing its report of activities regarding collection of Kansas *ad valorem* taxes.

Williams states that this filing is being made in compliance with Commission order issued September 10, 1997 in Docket Nos. RP97–369–000, *et al.* The September 10 order requires first sellers to make refunds for the period October 3, 1983 through June 28, 1988. The Commission also directed that pipelines file a report annually concerning their activities to collect and flow through refunds of the taxes at issue.

Williams states that a copy of its filing was served on all parties included on the official service list maintained by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's rule and regulations. All such protests must be filed on or before June 3, 1999. 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. 99–14028 Filed 6–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–242–000]

Williston Basin Interstate Pipeline Co.; Application

May 27, 1999.

Take notice that on March 8, 1999, as supplemented May 19, 1999, Williston Basin Interstate Pipeline Company (Williston) 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity for authorization to install and operate a leased gas compressor unit at the Billy Creek Compressor Station, Johnson County, Wyoming to enable Williston to transport natural gas to current and potential pipeline interconnection points, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Specifically, Williston proposes to install and operate a 1,478 horsepower Waukesha Model L7042GSI V–12 engine coupled with an Ariel JGK–4 compressor unit. Williston indicates that the compressor unit lease rental for this compressor unit is $150,000 per year and the compressor unit will be installed, operated, and maintained by Williston personnel. Williston estimates the cost of the project to be $298,321 excluding the $150,000 per year to lease the compressor unit. Williston requests that the Commission grant rolled-in rate treatment for the proposed facilities.

Williston claims that producers in the Powder River Basin have undertaken extensive drilling programs for the production of coal seam gas. Williston states that it believes the installation and operation of the proposed leased compressor will enable Williston Basin's existing pipeline capacity to be more fully utilized through increased throughput, will allow producers and shippers an avenue to move Powder River Basin coal seam gas production to pipelines interconnecting with Williston Basin's system in the most economical and environmentally sensitive manner, and will attract additional supply sources to its isolated Billy Creek-Sheridan system.

Williston indicates that on February 5, 1999, Williston posted a notice on its Electronic Bulletin Board and held an open season from February 8, 1999, through February 22, 1999, to solicit interest from shippers in utilizing the additional transportation capacity on the Billy Creek-Sheridan line section which capacity will become available as a result of the installation of the proposed leased compressor. Williston states that as of the date of the filing of its application, Williston has not consummated any definitive commitments for the additional transportation capacity that will be available as a result of the proposed compressor installation.

By letter filed May 19, 1999, Williston supplemented its application, stating that it has consummated a precedent agreement for some of the transportation capacity that will be available as a result of the proposed compressor installation. Williston's filing included copies of the precedent agreement which Williston requests be given confidential treatment under 18 CFR 388.112 because it is competitively sensitive. Williston marked the precedent agreement ''Contains Privileged Information—Do Not Release''.

Williston states that while the precedent agreement may not represent a commitment for a substantial amount of the project's capacity and may not meet the Commission's threshold test for project capacity commitment, there are several reasons why the Commission should proceed with its review and processing of Williston's application. Williston's first reason is the minor nature of the project and the fact that it will have little economic or environmental impact. Williston's second reason is the fact that the revenue generated in the first year from the firm transportation contract to be executed based on the precedent agreement is more that 77% of the estimated first year cost of service. Williston next states that it believes that the proposal will produce system benefits by more fully utilizing its existing Bill Creek-Sheridan line section and by increasing system reliability by attracting additional gas supply sources to its pipeline system. Williston cites, as a fourth reason, its belief that the transportation market in Billy Creek-Sheridan area will continue to grow and generate additional firm and interruptible transportation revenues fully recovering the incremental cost of service associated with the project.

Any person desiring to participate in the hearing process or to make any protest with reference to said amendment should on or before June 17, 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.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 7 and 15 of the Natural Gas Act and 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 Williston to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14023 Filed 6–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3012–000, et al.]

Entergy Services, Inc., et al.; Electric Rate and Corporate Regulation Filings

May 26, 1999.

Take notice that the following filings have been made with the Commission:

1. Entergy Services, Inc.

[Docket No. ER99–3012–000]

Take notice that on May 21, 1999, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Point-to-Point Transportation Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Public Service Company of Colorado.

Comment date: June 10 , 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Virginia Electric and Power Company

[Docket No. ER99–3013–000]

Take notice that on May 21, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Long Term Firm Point-to-Point Transmission Service with PECO Energy Company under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide Long Term Firm Point-to-Point Transmission Service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of January 1, 2001.

Copies of the filing were served upon PECO Energy Company, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: June 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Western Resources, Inc.

[Docket No. ER99–3014–000]

Take notice that on May 21, 1999, Western Resources, Inc., tendered for filing two agreements between Western Resources and Central Illinois Light Company and Reliant Energy Services. Western Resources states that the purpose of the agreements is to permit the customers to take service under Western Resources' market-based power sales tariff on file with the Commission.

The agreements are proposed to become effective April 23, 1999 and April 26, 1999.

Copies of the filing were served upon Central Illinois Light Company and Reliant Energy Services and the Kansas Corporation Commission.

Comment date: June 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. MidAmerican Energy Company

[Docket No. ER99–3015–000]

Take notice that on May 21, 1999, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, tendered for filing with the Commission a Network Integration Transmission Service Agreement with MidAmerican Energy Company (MidAmerican, as a retail merchant) dated May 1, 1999, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of May 1, 1999, for the Network Integration Transmission Service Agreement, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: June 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. MidAmerican Energy Company

[Docket No. ER99–3016–000]

Take notice that on May 21, 1999, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, tendered for filing with the Commission a Firm Transmission Service Agreement with The Energy Authority, Inc. (Energy Authority), dated May 11, 1999, and a Non-Firm Transmission Service Agreement with Energy Authority, dated May 11, 1999, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of May 11, 1999, for the Agreements with Energy Authority, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Energy Authority, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: June 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Duquesne Light Company

[Docket No. ER99–3024–000]

Take notice that on May 21, 1999, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000) an executed Service Agreement at Market-Based Rates with Consumers Energy Company and The Detroit Edison Company collectively known as the Michigan Companies (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of May 20, 1999.

Copies of this filing were served upon Customer.

Comment date: June 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Citizens Utilities Company

[Docket Nos. OA97–520–003 and OA97–610–003]

Take notice that on May 11, 1999, Citizens Utilities Company filed revised standards of conduct.

Comment date: June 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the

Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14030 Filed 6–2–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–100–000, et al.]

Panda Guadalupe Power, L.P., et al.; Electric Rate and Corporate Regulation Filings

May 27, 1999.

Take notice that the following filings have been made with the Commission:

1. Panda Guadalupe Power, L.P.

[Docket No. EG98–100–000]

Take notice that on May 21, 1999, Panda Guadalupe Power, L.P. (Panda), 4100 Spring Valley Road, Suite 1001, Dallas, Texas 75244, tendered for filing an amendment to their original filing of Application for Determination of Exempt Wholesale Generator Status filed on July 23, 1998, with the Federal Energy Regulatory Commission (FERC), pursuant to Part 365 of the Commission's Regulations, specifically amending the name of the applicant, the ownership of the applicant and the size of the Project.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Barton Villages, Inc., et al. v. Citizens Utilities Company

[Docket No. EL92–33–006]

Take notice that on May 18, 1999, Citizens Utilities Company (Citizens) filed an amendment to their compliance filing that was filed on May 5, 1999 in the above-referenced proceeding.

Comment date: June 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. The United Illuminating Company

[Docket No. ER99–2972–000]

Take notice that on May 17, 1999, The United Illuminating Company (UI), tendered for filing four Service Agreements for Firm Point-to-Point Transmission Service and an Interconnection Agreement between UI and Wisvest-Connecticut LLC executed pursuant to UI's Open Access Transmission Tariff, FERC Electric Tariff, Original Volume No. 4, as amended.

Comment date: June 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Niagara Mohawk Power Corporation

[Docket No. ER99–3008–000]

Take notice that on May 21, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing with the Federal Energy Regulatory Commission an executed Firm Point-To-Point Transmission Service Agreement between Niagara Mohawk and Rochester Gas and Electric Corporation (RG&E). This Transmission Service Agreement specifies that RG&E has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow Niagara Mohawk and RG&E to enter into separately scheduled transactions under which Niagara Mohawk will provide firm transmission service for RG&E as the parties may mutually agree.

Niagara Mohawk requests an effective date of May 7, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon the New York State Public Service Commission and RG&E.

Comment date: June 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Commonwealth Edison Company

[Docket No. ER99–3009–000]

Take notice that on May 21, 1999, Commonwealth Edison Company (ComEd) submitted for filing an Interconnection Agreement with Rocky Road LLC (Rocky Road).

ComEd requests an effective date of May 22, 1999 and accordingly seeks waiver of the Commission's notice requirements.

Copies of the filing were served on Rocky Road and the Illinois Commerce Commission.

Comment date: June 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Duke Energy South Bay, LLC

[Docket No. ER99–3010–000]

Take notice that on May 21, 1999, Duke Energy South Bay, LLC (DESB) tendered for filing a service agreement establishing Duke Energy Trading and Marketing, L.L.C. DETM) as a customer under DESB's Rate Schedule No. 1.

DESB requests an effective date of April 23, 1999.

DESB states that a copy of the filing was served on DETM.

Comment date: June 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Florida Power Corporation

[Docket No. ER99–3011–000]

Take notice that on May 21, 1999, Florida Power Corporation (FPC) tendered for filing a Short-Term Service Agreement between Entergy Power Marketing Corp. and FPC for service under FPC's Market-Based Wholesale Power Sales Tariff (MR–1), FERC Electric Tariff, Volume Number 8, as amended. This Tariff was accepted for filing by the Commission on June 26, 1997, in Docket No. ER97–2846–000.

The service agreement is proposed to be effective May 21, 1999.

Comment date: June 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Southwestern Electric Power Company

[Docket No. ER99–3023–000]

Take notice that on May 21, 1999, Southwestern Electric Power Company (SWEPCO) filed Amendment No. 1 to the Amended and Restated Power Supply Agreement (PSA), dated June 30, 1997, between SWEPCO and Northeast Texas Electric Cooperative, Inc. (NTEC). SWEPCO states that this filing reflects changes in the PSA to accommodate NTEC's decision to exercise its option under the PSA to receive transmission service pursuant to the Open Access Transmission Services Tariff of the Central and South West Companies (CSW OATT) rather than pursuant to the PSA.

SWEPCO requests an effective date of January 1, 1999.

Copies of the filing have been served on NTEC and the Public Utility Commission of Texas.

Comment date: June 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14031 Filed 6–2–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM95–9–007]

Open Access Same-Time Information System (OASIS) and Standards of Conduct; Filing

May 27, 1999.

Take notice that on May 18, 1999, the North American Electric Reliability Council (NERC) filed, on behalf of the NERC Interim Market Interface Committee (IMIC), a report entitled ''Experiment for Processing Requests for Next-Hour Transmission Service on the OASIS.'' The filing of the report was directed by the Commission in its Order Approving Experiment for Processing Requests for Next-Hour Transmission Service on the OASIS, issued September 29, 1998, in the above-docketed proceeding. The IMIC requests that the Commission permit the experimental next-hour procedures to go into effect on an interim basis, until electronic procedures for next-hour scheduling are developed and ready for implementation.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 23, 1999. Protests will be considered by the Commission to determine 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 must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14021 Filed 6–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Application Accepted for Filing and Soliciting Motions To Intervene and Protests and Comments

May 27, 1999.

Take notice that the following hydroelectric application has been accepted for filing and the Commission has established a deadline for interventions and protests:

a. *Type of Application:* Subsequent License.

b. *Project No.:* 3090–008.

c. *Date filed:* January 27, 1999.

d. *Applicant:* Village of Lyndonville Electric Department.

e. *Name of Project:* Vail Power Project.

f. *Location:* On Passumpsic River In Calendonia County, Vermont. The project would include no federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Kenneth C. Mason, Village of Lyndonville Electric Department, 20 Park Avenue, PO Box 167, Lyndonville, VT 05851, (802) 626–3366.

i. *FERC Contact:* Any questions on this notice should be addressed to Robert Bell, at robert.bell@ferc.fed.us, or 202–219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All document (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 on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of Environmental Analysis:* This application has been accepted for filing but is not ready for environmental analysis at this time—see attached paragraph E1.

l. *Brief Description of the Project:* The existing project consists of: (1) The 96-foot-long ogee-shaped concrete gravity dam varying in height from 8 to 15 feet and topped with 20⅝-inch wooden flashboards; (2) the impoundment having a surface area of 79 acres, with negligible storage and normal water surface elevation of 688.63 feet msl; (3) the intake structure; (4) the powerhouse containing one generating unit with an installed capacity of 350-kW; (5) the tailrace; (6) a 0.8-mile-long, 2.4-kV transmission line; and (7) appurtenant facilities.

The applicant does not propose any modifications to the project features or operation.

The project would have an annual generation of 1,850 MWh and would be used to provide energy to its customers.

m. 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 the web at 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.

Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of rule of practice and procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing

responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20246. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–14016 Filed 6–2–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6353–7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; NSPS Metallic Mineral Processing Plants

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: NSPS Subpart LL, Metallic Mineral Processing Plants, OMB Control Number 2060–0016, expiration date 06/30/99. The ICR describes the nature of the information collection and its expected burden and cost, and where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 6, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by E–Mail 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. 0982.06.

SUPPLEMENTARY INFORMATION: *Title:* NSPS Subpart LL, Metallic Mineral Processing Plants, OMB Control No. 2060–0016, EPA ICR No. 0982.06, expiration date 6/30/99. This is a request for revision of a currently approved collection.

Abstract: The New Source Performance Standards (NSPS) for Metallic Mineral Processing Plants were proposed on August 24, 1982 and promulgated on February 21, 1984. These standards apply to the following facilities in Metallic Mineral Processing Plants: each crusher and screen in open-pit mines; each crusher, screen, bucket elevator, conveyor belt transfer point, thermal dryer, product packaging station, storage bin, enclosed storage area, truck loading and unloading station at the mill or concentrator, commencing construction, modification or reconstruction after the date of proposal. The NSPS does not apply to facilities located in underground mines, or to facilities performing the beneficiation of uranium ore at uranium ore processing plants.

Particulate matter (PM) is the pollutant regulated under this Subpart. The standards limit the particulate matter emissions from the stack to 0.05 grams per dry standard cubic meter and to 7% opacity. Those sources which are using a wet scrubbing control device are exempted from the 7% opacity requirement. No affected facility may discharge any process fugitive emissions that exhibit greater than 10% opacity.

Response to the collection of information is mandatory under 40 CFR part 60. Owners or operators of the affected facilities described must make initial notifications, including notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of the demonstration of the continuous monitoring system (CMS), and notification of the initial performance test. Performance test reports are needed as these are the Agency's records of a source's initial capability to comply with emission standards, and note the operating conditions, flow rate and pressure drop, under which compliance was achieved. Owners of affected facilities are required to install, calibrate, maintain, and operate a continuous monitoring system to measure the change in the pressure of the gas stream through the scrubber and the scrubbing liquid flow rate. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shut down, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative.

Semiannual excess emissions reports and monitoring systems performance reports will include the exceeded findings of any control device operating parameters, (specified in 40 CFR 60.735, Recordkeeping and Reporting), the date and time of the deviance, the nature and cause of the malfunction (if known) and the corrective measures taken, and identification of the time period during which the CMS was inoperative (this does not include zero and span checks or typical repairs/adjustments). These notifications, reports and records are required, in general, of all sources subject to NSPS.

This information is being collected to assure compliance with 40 CFR part 60. Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, (as specified in part 60.735, Recordkeeping and Reporting). These notifications, reports and records are required, in general, of all sources subject to NSPS.

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** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on September 4, 1998. No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 40 hours per response. 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: Owners and Operators of Metallic Mineral Processing Plants.

Estimated Number of Respondents: 22.

Frequency of Response: Semiannually.

Estimated Total Annual Hour Burden: 1,760 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $14,300.

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. 0982.06 and OMB Control No. 2060–0016 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.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–14059 Filed 6–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6353–6]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, Wood Preservatives—Submission of Information Regarding Arsenic Exposure Levels in Wood Treatment Plants

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: Wood Preservatives—Submission of Information Regarding Arsenic Exposure Levels in Wood Treatment Plants, OMB control number 2070–0081, Expiration date: July 31, 1999. 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 6, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail 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. 1289.05.

SUPPLEMENTARY INFORMATION: *Title:* Wood Preservatives—Submission of Information Regarding Arsenic Exposure Levels in Wood Treatment Plants, (OMB Control No. 2070–0081; EPA ICR No. 1289.05.) Expiring 07/31/99. This is a request for an extension of a currently approved collection.

Abstract: This data collection program, in which participation is voluntary, is designed to provide certification and supporting test data to determine whether wood preserving facilities are protecting their workers from unsafe exposure to airborne inorganic arsenic. If air monitoring tests indicate that levels of airborne arsenic are safe and the facility submits the appropriate test data and certification, the facility can voluntarily exempt itself from the requirement to use personal respirators while pressure treating lumber. The requirement to wear respirators is considered the most burdensome requirement of the pesticide labels, which must be followed once a pesticide, in this case a wood treating formulation, is registered under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). Since the submission to EPA does not contain confidential business information it will not be treated as such. 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 Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on January 5, 1999 (64 FR 509). No comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 5.1 hours per response. 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: Participating facilities are those that use formulations of inorganic arsenic to treat wood.

Estimated Number of Respondents: 250.

Frequency of Response: Annual.

Estimated Total Annual Hour Burden: 1284.

Estimated Total Annualized Capital and O&M Cost Burden: 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. 1289.05 and OMB Control No. 2070–0081 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.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–14060 Filed 6–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6354–1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Risk Management Program Requirements and Petitions To Modify the List of Regulated Substances Under Section 112(r) of the Clean Air Act (CAA)

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: Risk Management Program Requirements and Petitions to Modify the List of Regulated Substances under section 112(r) of the Clean Air Act (CAA). This ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument. This ICR combines and renews two previously approved ICRs, Registration and Documentation of Risk Management Plans under section 112(r) of the CAA, ICR No. 1656.03 (expires July 31, 1999, OMB Control No. 2050–0144) and Petitions to modify the list of regulated substances under section 112 (r) of the CAA, ICR No. 1606.02 (expired April 30, 1999, OMB Control No. 2050–0127; OMB granted an extension for this ICR to 7/99).

On February 22, 1999, OMB approved an ICR submitted for amendments to RMP regulations to allow for the submission of claims for confidential business information, ICR No. 1656.05, OMB Control No. 2050–0144. In a separate **Federal Register** document, EPA is proposing to modify the rule listing regulated substances and threshold quantities of the RMP issued under section 112(r) of the CAA.

DATES: Comments must be submitted on or before July 6, 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.1656.06

SUPPLEMENTARY INFORMATION: *Title:* Risk Management Program Requirements and Petitions to Modify the List of Regulated Substances under section 112(r) of the Clean Air Act (CAA); EPA ICR No. 1656.06. This is a request for extension of a currently approved collection.

Abstract: The 1990 CAA Amendments added section 112(r) to provide for the prevention and mitigation of accidental releases. Section 112(r) mandates that EPA promulgate a list of ''regulated substances,'' with threshold quantities and establish procedures for the addition and deletion of substances from the list of ''regulated substances''. Processes at stationary sources that contain a threshold quantity of a regulated substance are subject to accidental release prevention regulations promulgated under CAA section 112(r)(7). These two rules are codified as 40 CFR part 68. Part 68 requires that sources with more than a threshold quantity of a regulated substance in a process develop and implement a risk management program and submit a risk management plan to EPA by June 21, 1999.

This information collection request addresses the following information requirements: (1) Documenting sources' risk management programs and submitting a source risk management plan (RMP) under CAA section 112(r)(7); and (2) Collecting and submitting information to support petitions to modify the list of regulated substances under CAA section 112(r)(3).

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 March 3, 1999 (64 FR 10293). EPA did not receive any comments.

Burden Statement: This combined ICR covers the period from August 1, 1999, through July 31, 2002. The compliance schedule for the Part 68 requirements, established by rule on June 20, 1996, requires the implementation of source risk management programs and the submission of RMPs by June 21, 1999, for sources meeting the rule's applicability criteria. As a result, the burden to facilities for initial rule compliance, including rule familiarization and program implementation, is assumed to have taken place prior to the period covered by this ICR; these costs were accounted for in ICR 1656.03. Therefore, in this ICR, EPA has accounted for only ongoing program implementation costs (as well as rule familiarization and program implementation costs for new facilities that become subject to these regulations after June 1999).

The public reporting burden will depend on the regulatory program tier into which sources are categorized. In this ICR, the public reporting burden for rule familiarization is estimated to range between 12 to 35 hours per source. The public reporting burden to prepare and submit a new RMP is estimated to take 6.0 hours for retailers to 10.0 hours for non-chemical manufacturers. RMP revisions are estimated to require 3 hours for wholesalers to 8.6 hours for chemical manufacturers. The public record keeping burden to maintain on-site documentation is estimated to range from 2.8 hours for retailers to 279 hours for chemical manufacturers. The public reporting burden for CBI claims is estimated to be 9.5 hours for certain chemical manufacturing sources. The public reporting burden for individuals filing petitions to amend the list of regulated substances is estimated to be 138 hours. The total annual public reporting burden to become familiar with the rule, complete and submit (or revise) the risk management plan, maintain on-site documentation, substantiate claims for confidential business information, and prepare and submit petitions to amend the list of regulated substances is estimated to be about 463,000 hours over three years, or an annual burden of 154,000 hours. The burden estimated for 20 states that may be implementing Part 68 program, is 56,000 hours or an annual burden of 19,000 hours. Therefore, the total burden for all sources and states is estimated to be 519,000 hours for three years, or an annual burden of 173,000.

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: Chemical manufacturers, Petroleum refineries, Non-chemical manufacturers, Federal facilities, State and local entities, Farms, Retailers, etc.

Estimated Number of Respondents: 69,800.

Frequency of Response: For the period covered by this ICR, new sources and sources required to submit revisions to their Risk Management Plan (RMP) as stated in 40 CFR 68.190.

Estimated Total Annual Hour Burden: Sources: 154,000 hours; States/Local implementing agency 19,000 hours (estimated 20 states may be seeking delegation).

Estimated Total Annualized Capital, Operating/ Maintenance Cost Burden: $8,800.

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. 1656.06 and OMB Control No. 2050–0144 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.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–14065 Filed 6–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6243–2]

Designation of Dredged Material Disposal Sites in Long Island Sound, Connecticut and New York. Intent To Prepare an Environmental Impact Statement

AGENCIES: U. S. Environmental Protection Agency (EPA)—Region I, New England and Region II, New York in cooperation with the U.S. Army Corps of Engineers (Corps), New England and New York Districts.

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS) to consider the potential designation of one or more dredged material disposal sites in the waters of Long Island Sound under section 102(c) of the Marine Protection, Research and Sanctuaries Act (MPRSA) and 40 CFR 230.80 of EPA's regulations under section 404 of the Clean Water Act. The EIS will provide an evaluation of the existing historically used sites known as the Western Long Island Sound Disposal Site, the Central Long Island Disposal Site, the Cornfield Shoals Disposal Site and the New London Disposal Site, as well as additional alternatives including other open water disposal sites, other types of dredged material disposal and management, and the no action alternative.

Purpose

In accordance with EPA's Statement of Policy for Voluntary Preparation of National Environmental Policy Act documents for all ocean disposal site designations (**Federal Register** 62(229): 63334–63336, October 29, 1998), EPA issues this Notice of Intent to prepare an EIS for the Designation of Dredged Material Disposal Sites in Long Island Sound, offshore of Connecticut, and New York.

Summary

Dredged material has been disposed of at the existing sites known as the Western Long Island Sound, the Central Long Island Sound, the Cornfield Shoals and the New London Disposal Sites pursuant to programmatic and site designation EISs released by the Corps in 1982 and 1991. This activity has been regulated in different ways at different times depending on the status of applicable law and policy. EPA and the Corps have identified a likely need to continue the marine disposal of dredged material in the Long Island Sound area. Therefore, the two agencies have decided to consider the continued use of the above-listed existing sites and their designation as dredged material disposal sites under section 102(c) of the MPRSA. Other alternatives will also be evaluated, including other open water disposal sites, other disposal and management options, and the no action alternative. Designation of a site does not by itself authorize or result in disposal of any particular material, it only serves to make the designated site a disposal option available for consideration in the alternatives analysis for each individual dredging project in the area.

The EPA and the Corps, have entered an agreement to undertake designation of dredged material disposal sites in Long Island Sound under section 102(c) of the MPRSA. The EPA has the responsibility of designating sites under section 102(c) of the Act and 40 CFR 228.4 of its regulations. EPA and the Corps will also consider making an advanced identification under 40 CFR 230.80 of EPA's Clean Water Act section 404 regulations for any site that may be designated. The Clean Water Act and the MPRSA come into play because the waters of Long Island Sound are inland waters, but section 106(f) of the MPRSA extends certain aspects of the MPRSA into Long Island Sound for certain projects.

An EIS will evaluate the four current sites used in the Sound as well as other sites for, and means of, disposal and management, including the no action alternative. The EIS will support the EPA's final decision on whether one or more dredged material disposal sites will be designated under the MPRSA identified in advance under 40 CFR 230.80. The EIS will include analysis applying the five general and 11 specific site selection criteria for designating ocean disposal sites presented in 40 CFR 228.5 and 228.6, respectively. The Corps, New England District, has prepared a study reviewing existing data for the existing sites relative to these criteria and this study will serve as a starting point for further evaluation of the existing sites in the EIS.

Need for EIS

On May 7, 1974, and as amended in October 29, 1998, the EPA published a Statement of Policy on Environmental Impact Statements (EISs). Section (1) (d) (2) of that policy specifies that EISs will be prepared in connection with ocean disposal site designations under section 102 (c) of the MPRSA. Evaluation of site designation, and advanced identification under 40 CFR 230.80, will serve to clarify the availability of particular sites for consideration as dredged material disposal options over the long term.

Alternatives

In evaluating the alternatives, the EIS will identify and evaluate locations within the Long Island Sound study area that are best suited to receive dredged material suitable for open water marine disposal. At a minimum, the EIS will consider various alternatives including:

- No-action (i.e., no designation of any sites);
- Designation of one or more of the existing open water sites;
- Designation of alternative open water sites identified within the study area that may offer environmental advantages to the existing sites; and
- Identification of other disposal and/or management options, either in or out of the water.

Scoping

The Environmental Protection Agency—New England Region and the Corps of Engineers, New England District, will hold public scoping meetings on June 15, 1999 at the State University of New York, Stony Brook Union Auditorum,100 Nicolls Road, Stony Brook , June 16, 1999 and Groton Inn & Suites, Main Room Left, 99 Goldstar Highway, Route 184, Groton Connecticut; and June 23, 1999 at Westin Stamford Hotel, Commodore Vanderbilt, One First Stamford Place, Stamford, CT. For all meetings, registration will be from 6–7 p.m.; the meetings will be between the hours of 7 and 10 p.m. Details of the history of the project and the alternatives to be considered will be presented. The

public is invited to attend and identify issues that should be addressed in the EIS.

FOR FURTHER INFORMATION AND TO BE PLACED ON THE PROJECT MAILING LIST CONTACT: Ann Rodney, U.S. EPA—New England Region, One Congress Street, Suite 1100, CWQ, Boston, MA 02114–2023. (617) 918–1538. *RODNEY.ANN@EPA.GOV*

Please contact Ann Rodney should you have special needs (sign language interpreters, access needs) at the above address or our TDYι (617) 918–1189.

ESTIMATED DATE OF THE DRAFT EIS RELEASE: Fall 2001.

Responsible Officials:

John P. DeVillars,

Regional Administrator, EPA—New England.

Date: May 28, 1999.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 99–14093 Filed 6–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00271; FRL–6082–1]

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: A meeting of the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL Committee) will be held June 14–16, 1999, in Washington, DC. At the meeting, the NAC/AEGL Committee will address, as time permits, the various aspects of the acute toxicity and the development of Acute Exposure Guideline Levels (AEGLs) for the following chemicals: Hydrogen sulfide, perchloromethyl mercaptan, tetrachloroethylene, and toluene. There will also be a discussion of the review and comment by the National Academy of Sciences/National Research Council Subcommittee on certain interim AEGL values previously published in the **Federal Register** issue of October 30, 1997 (62 FR 58840–58851) (FRL–5737–3). These chemicals include: Aniline, arsine, chlorine, 1,2-dichloroethylene, 1,1- and 1,2-dimethyl hydrazine, fluorine, hydrazine, methyl hydrazine, and phosphine.

DATES: Meetings of the NAC/AEGL Committee will be held from 10 a.m. to 5 p.m. on June 14, 1999; from 8 a.m. to 5 p.m. on June 15, 1999; and from 8 a.m. to 1 p.m. on June 16, 1999.

ADDRESSES: The meetings will be held in the Old Post Office Building, Room M09, 1100 Pennsylvania Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Paul S. Tobin, Designated Federal Officer (DFO), Office of Prevention, Pesticides and Toxic Substances (7406), 401 M St., SW., Washington, DC 20460; telephone number: (202) 260–1736; e-mail address: tobin.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply To Me?

This action is directed to the public in general. This action may be of particular interest to anyone who may be affected if the AEGL values are adopted by government agencies for emergency planning, prevention, or response programs, such as EPA's Risk Management Program under the Clean Air Act and Amendments, section 112r. It is possible that other Federal agencies besides EPA, as well as State agencies and private organizations, may adopt the AEGL values for their programs. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. 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/.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–00271. The official record consists of any documents that are specifically referenced in this action, any public comments that are received during an applicable comment period, and other information related to this action, including any 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 an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

II. Meeting Procedures

For additional information on the scheduled meetings, the agendas of the NAC/AEGL Committee, or the submission of information on chemicals to be discussed at the meetings, contact the DFO listed under the ''FOR FURTHER INFORMATION CONTACT'' section.

The meeting of the NAC/AEGL Committee will be open to the public. Oral presentations or statements by interested parties will be limited to 10 minutes. Interested parties are encouraged to contact the DFO to schedule presentations before the NAC/AEGL Committee. Since seating for outside observers may be limited, those wishing to attend the meetings as observers are also encouraged to contact the DFO at the earliest possible date to ensure adequate seating arrangements. Inquiries regarding oral presentations and the submission of written statements or chemical-specific information should be directed to the DFO.

III. Future Meetings

Another meeting of the NAC/AEGL Committee is scheduled for September 14–16, 1999. The NAC/AEGL Committee is currently planning to address AEGL values for the following chemicals: Bromine, ethylene oxide, methylene chloride, methylisocyanate, oleum, Otto fuel II (propylene glycol dinitrate major component), sulfuric acid, sulfur trioxide, tetramethyl lead, trichloroethane, and trichloroethylene.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Health.

Dated: May 26, 1999.

Joseph A. Carra,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 99–14042 Filed 5–28–99; 3:16 pm]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34185; FRL–6076–2]

Availability of the Chlorothalonil Reregistration Eligibility Decision Document for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of and starts a 60-day public comment period of the Reregistration Eligibility Decision (RED) document for the active ingredient chlorothalonil. The RED for this chemical is the Agency's formal regulatory assessment of the health and environmental database of the subject chemical and presents the Agency's determination regarding which pesticidal uses are eligible for reregistration.

DATES: Written comments on the RED decisions must be submitted by August 2, 1999.

ADDRESSES: Three copies of comments identified with the docket control number ''OPP–34185'' and the case number (noted below), should be submitted to: By mail: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to the docket on the first floor (Room 119), Crystal Mall 2 (CM #2), 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION'' of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice (including comments and data submitted electronically). The public docket and docket index, including printed paper versions of electronic comments, which does not include any information claimed as CBI will be available for public inspection on the first floor (Rm. 119) at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Technical questions on the RED document should be directed to the appropriate point-of-contact:

Chemical Name	Case No	Point of Contact	Telephone No.	e-mail Address
Chlorothalonil	0097	Jill Bloom	703–308–8019	Bloom.Jill@epamail.epa.gov

To request a copy of the above listed RED document, or the RED Fact Sheet, contact the OPP Pesticide Docket, Public Information and Records Integrity Branch, first floor (Rm. 119), at the address given above or call (703) 305–5805.

SUPPLEMENTARY INFORMATION:

I. Electronic Availability

Electronic copies of this document and various support documents are available from the EPA home page at the Federal Register-Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/).

Electronic copies of the REDs and RED fact sheets can be downloaded from the Pesticide Special Review and Reregistration Information System at (703) 308–7224, and also can be reached on the Internet via EPA's website at: http://www.epa.gov/REDs.

II. Reregistration Eligibility Decision

The Agency has issued a Reregistration Eligibility Decision (RED) document for the pesticidal active ingredient chlorothalonil. Under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1988, EPA is conducting a reregistration program to reevaluate existing pesticides to make sure they meet current scientific and regulatory standards. The data base to support the reregistration of chlorothalonil is substantially complete.

All registrants of products containing the above listed active ingredient have been sent the chlorothalonil RED document and must respond to labeling requirements and product specific data requirements (if applicable) within 8 months of receipt. Products containing other active ingredients will not be reregistered until those other active ingredients are determined to be eligible for reregistration.

The reregistration program is being conducted under congressionally mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing this RED as a final document with a 60-day comment period. Although the 60-day public comment period does not affect the registrant's response due date, it is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments will be carefully considered by the Agency.

III. Public Record and Electronic Submission

The official record for this notice, as well as the public version, has been established for this notice under docket control number ''OPP–34185'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (OPP–34185). Electronic comments on this

notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection. Pesticide. Chlorothalonil.

Dated: April 29, 1999.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 99–14068 Filed 6–2–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PB–402404–AR/A; FRL–6084–2]

Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; State of Arkansas's Authorization Application; Extension of Public Hearing Request Period; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In the **Federal Register** of May 19, 1999 (64 FR 27266) (FRL–6078–1), EPA announced that the State of Arkansas had submitted an application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). The notice announced a 45–day public comment period and an opportunity to request a public hearing on this application. The notice incorrectly listed the public hearing date. This notice corrects the date of the public hearing. In FR Doc. 99–12590, on page 27266, in the third column, first full paragraph under the ''DATES'' caption, the two references to the public hearing date of ''May 21, 1999'' should read ''June 11, 1999''. This notice also extends the date for submission of requests for a public hearing to June 4, 1999. If a public hearing is not requested, this meeting time and place will be canceled. Therefore, individuals are advised to verify the status of the public hearing by contacting Jeffrey Robinson (name, telephone number, and address are provided in the ''FOR FURTHER INFORMATION CONTACT'' section of this notice) after June 4, 1999, and before the June 11, 1999 public hearing date.

FOR FURTHER INFORMATION CONTACT: Jeffrey Robinson, Regional Lead Coordinator, 1445 Ross Avenue, Suite 1200, 6PD-T, Dallas, TX 75202–2733. Telephone: 214–665–7577, e-mail address: robinson.jeffrey@epa.gov.

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: May 24, 1999.

Robert E. Hanneschlager,

Acting Division Director, Multimedia Planning and Permitting, Region VI.

[FR Doc. 99–14067 Filed 6–2–99; 8:45 am]

BILLING CODE 6560–50–F

BOARD OF GOVERNORS OF THE FEDERAL RESERVE

Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, June 7, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: May 28, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–14133 Filed 5–28–99; 5:05 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement [99147]]

National Institute for Occupational Safety and Health; A Cooperative Agreement for Research, Prevention Education, and Clinical Services in Occupational Safety and Health Clinics

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY)1999 funds for a cooperative agreement program for research, prevention education, and clinical services in occupational safety and health. This program addresses the ''Healthy People 2000'' priority area(s) for Occupational Safety and Health.

The purpose of the program is to enhance the public health capabilities, and to provide infrastructure support for the development of an academic clinical occupational health network to encourage clinical epidemiology, health services research, and enhanced educational intervention effectiveness research, as well as to develop clinical information relevant to improving medical screening and surveillance for specific occupational hazards and to conduct outreach education.

B. Eligible Applicants

This program is directed only to national organizations of health professionals that provide occupational safety and health services for their defined membership and constituencies.

Note: Public Law 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

Approximately $200,000 is available in FY 1999 to fund one award. It is expected that the award will begin on or about September 29, 1999, and will be made for a 12-month budget period within a project period of up to five years. The funding estimate is subject to change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Cooperative Activities

In conducting activities to achieve the purpose of this program, the recipient

will be responsible for activities under A. (Recipient Activities), and CDC/NIOSH will be responsible for the activities listed under B. (CDC/NIOSH Activities).

A. Recipient Activities

1. Develop and maintain a national clinical database, consisting of exposure and outcome information, for both surveillance purposes and for case identification.
2. Conduct periodic review of the database.
3. Provide Occupational health educational outreach in the health professions and primary care practitioners, with emphasis on those providing care to medically underserved populations.
4. Develop, maintain, and distribute to members a referral listing of full-service occupational clinics at which individual patients or small employers may seek high quality, multi-disciplinary, patient-centered occupational health services practiced by clinicians who are additionally committed to a public health model for prevention.
5. Work to expand into geographically and medically under-served areas. Identify potential sources of occupational health care in these areas and establish mentoring relationships with the nearest ''full-service'' clinic, to include educational and referral ties, and capacity-building.
6. Develop and enhance an internet listserv that facilitates sharing clinical information without breaching medical confidentiality.
7. Develop and disseminate information regarding clinical practices on occupational safety and health.
8. Develop information (such as documents) that provides needed information for clinicians engaged in the practice of occupational medicine.

B. CDC/NIOSH Activities

1. Provide technical assistance on all aspects of recipient activities.
2. Provide expertise in epidemiology, industrial hygiene, ergonomics and safety engineering for educational and capacity building endeavors.
3. Provide technical advise on identifying topics and targets for the outreach activity or other recipient activities.

E. Application Content

Competing Applications

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 30 double-spaced pages. The original and each copy of the application must be submitted unstapled and unbound. All materials must be typewritten, double-spaced, with unreduced type (font size 12 point) on 8 ½'' by 11'' paper, with at least 1'' margins, headers, and footers, and printed on one side only. Do not include any spiral or bound materials or pamphlets.

F. Submission and Deadline

Letter of Intent (LOI)

The letter of intent must be submitted on or before June 16, 1999, to: Sheryl L. Heard, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99147, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341.

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are in the application kit. On or before July 16, 1999, submit the application to: Sheryl Heard, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99147, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341.

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 orderly processing. (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. Background and Need (20 points):

The extent to which the applicant and its membership demonstrates experiences and capability in conducting this program. The extent to which a description of current and previous related experiences in terms of a national occupational clinical network, evaluation capability and coordination activities and demonstrated capacity to conduct the program.

2. Goals and Objectives (20 points):

The extent to which the applicant has included goals which are relevant to the purpose of the project and feasible to be accomplished during the project period, and the extent to which these goals are specific, and measurable. The extent to which the applicant has included objectives which are feasible to be accomplished during the budget period, and which address all activities necessary to accomplish the purpose of the proposal. The extent to which the objectives are specific, time-phased, and measurable.

3. Staffing (25 points)

The extent to which proposed staffing, organizational structure, staffing qualifications and experience, identified training needs or plan, and job descriptions and curricula vitae for both proposed and current staff indicate the applicant's ability to carry out the objectives of the program and show demonstrated experience in managing a national clinical database.

4. Methods (20 points)

The extent to which the proposed methods and activities can achieve the proposed objectives, consistent with the purposes of this announcement. The extent to which the applicant provides a detailed description of proposed activities which are likely to achieve each objective and overall program goals and which includes designation of responsibility for each action undertaken. The extent to which the applicant provides a reasonable and complete schedule for implementing all activities.

5. Evaluation (15 points)

The extent to which the applicant includes plans to evaluate the attainment of the proposed objectives. The extent to which a feasible plan for reporting evaluation results and using evaluation information for programmatic decisions is included.

6. Budget (not scored)

The extent to which the budget is reasonable, clearly justified, and

consistent with the intended use of funds.

7. Human Subjects (Not Scored)

If human subjects will be involved, the extent to which the applicant describes how will they be protected, i.e., describe the review process which will govern their participation.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of—

1. Annual progress reports;
2. Financial status report, no more than 90 days after the end of the budget period; and
3. Final financial status 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 (included in the application package).

AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2000
AR–12 Lobbying Restrictions
AR–20 Conference Grants

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 20(a) and 22(e) of the Occupational Safety and Health Act of 1970 [29 U.S.C. 669(a) and 671(e) (7)]. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

The application kit for 99147 can also be downloaded via the CDC home page on the Internet: *http://www.cdc.gov*

Please refer to Program Announcement 99147 when you request information. To receive additional written information and to request an application kit, call 1–888-GRANTS4 (1–888-6874). You will be asked to leave your name, address, and phone number and will need to refer to NIOSH Announcement 99147. You will receive a complete program description, information on application procedures, and application forms. CDC will not send application kits by facsimile or express mail.

If you have any questions after reviewing the contents of all the documents, business management technical assistance may be obtained by contacting: Sheryl Heard, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99147, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341, telephone (770) 488–2723, E-mail address: slh3@cdc.gov.

For program technical assistance, contact Gregory Wagner, M.D., National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC) Division of Respiratory Disease Studies, 1095 Willowdale Road, P–B121, Morgantown, West Virginia 26505–2888, Telephone (304) 285–5749, e-mail grw3@cdc.gov.

Dated: May 27, 1999.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–14002 Filed 6–2–99; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Prevention Research Initiative—Health Communications Research Grants

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Prevention Research Initiative—Health Communications Research Grants, Program Announcement #99107, meeting.

Times and Dates: 8:30 a.m.–9:15 a.m., July 21, 1999 (Open). 9:15 a.m.–4:30 p.m., July 21, 1999 (Closed). 8:30 a.m.–4:30 p.m., July 22, 1999 (Closed). 8:30 a.m.–4:30 p.m., July 23, 1999 (Closed).

Place: Atlanta Marriott North Central Hotel, 2100 Century Boulevard N.E., Atlanta, Georgia 30345.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Acting Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters to be discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement #99107.

Contact person for more information: Alan Janssen, M.S.P.H., Office of Communication, CDC, 1600 Clifton Rd., m/s D24, Atlanta, Georgia 30043. Telephone 404/639–2916, fax 404/639–3942, e-mail axj3@cdc.gov.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 27, 1999.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention CDC.

[FR Doc. 99–14003 Filed 6–2–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Genetics of Congenital Hearing Impairment; Workshop

The Division of Child Development, Disability, and Health (DCDDH) in the National Center for Environmental Health (NCEH) at the Centers for Disease Control and Prevention (CDC) announces the following workshop.

Name: A workshop entitled, The Genetics of Congenital Hearing Impairment, jointly sponsored by the Developmental Disabilities Branch, DCDDH, NCEH, CDC and Gallaudet University.

Time and Date: 8 a.m.–5 p.m., June 7, 1999.

Place: The Centers for Disease Control and Prevention, Chamblee Facility, Room 2201/2202, Building 102, 4770 Buford Highway, NE, Atlanta, Georgia 30341.

Status: Open for participation by anyone with an interest in Genetics of Congenital Hearing Impairment, limited only by the space available. Persons wishing to participate must e-mail their request to *higen@cdc.gov* and indicate if they will attend or if they will participate through a conference call on Eastern time. The conference telephone bridge number for Federal participants is 404/639–4100. The conference telephone bridge number for non-Federal participants is 800/713–1971. The Conference Code number is 486602. For security and confidentially purposes, participants will not be connected to a conference call without a valid conference code number. The conference name is Genetics of Congenital Hearing. If you have a problem during your conference, you may press *0 at anytime to signal the attendant. If you have questions, about the technical operations of the teleconference equipment please call 404/639–7550. Each participant will have the responsibility to call in to connect to the conference call.

Matters To Be Discussed: The objectives for the workshop are: (1) To discuss the public

health role and significance in population-based research of the genetics of congenital hearing impairment, (2) to develop strategies for population-based study of genetics of congenital hearing impairment, (3) to exchange ideas on the ethical and policy implications of public health research in the genetics of congenital hearing impairment, (4) to build partnerships between federal, state, academic, and private organizations to address activities for population genetics in congenital hearing impairment.

The workshop will provide a forum to discuss the strengths and limitations of several very specific study approaches that could be used to document the needed population-based research. We are particularly interested in strategies that involve collaboration with state-based Early Hearing Detection and Intervention (EHDI) programs. We are particularly interested in the perspectives of genetic ethicist; the deaf and hard-of-hearing communities; and state and local participants in universal newborn hearing detection and intervention programs.

Contact Persons for More Information: Kim Van Naarden, M.P.H., telephone 770/488–7184, or Marilyn Deal, telephone 770/488–7695, Division of Child Development, Disability, and Health, NCEH, CDC, 4770 Buford Highway, NE, Mailstop F–15, Atlanta, Georgia 30341. Fax 770/488–7361.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 26, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–13981 Filed 6–2–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Project

Title: State Plan for Foster Care and Adoption Assistance—Title IV–E.

OMB No.: 0980–0141.

Description: A State plan for foster care and adoption assistance is required by section 471 of the Social Security Act from any State wishing to claim Federal financial participation for foster care and adoption assistance. States may use a preprinted format or may develop their own format which meets the requirements of the law. The plan is submitted only once and amended as necessary. Our experience is that a State will amend a plan once every 4 years; approximately 12 per year.

Respondents: State, Local or Tribal Govt.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State Plan for Foster Care and Adoption Assistance	12	1	15	180

Estimated Total Annual Burden Hours: 180.

In compliance with the requirements of Section 3506(c)(2)(A) the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: May 27, 1999.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 99–13984 Filed 6–2–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99C–1455]

Genzyme Surgical Products Corp.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Genzyme Surgical Products Corp. has filed a petition proposing that the color additive regulations be amended to provide for the safe use of D&C Violet No. 2 as a color additive in absorbable sutures prepared from homopolymers of glycolide for general surgery. The petitioner also proposes that the nomenclature polyglactin 910 (glycolic-lactic acid polyester) be revised to the generic nomenclature-copolymers of 90 percent glycolide and 10 percent L-lactide.

FOR FURTHER INFORMATION CONTACT: Ellen M. Waldron, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3089.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 721(d)(1) (21 U.S.C. 379e(d)(1)), notice is given that a color additive petition (CAP 9C0266) has been filed by Genzyme Surgical Products Corp., 600 Airport Rd., Fall River, MA 02720. The petition proposes to amend the color additive regulations in § 74.3602 *D&C Violet No. 2* (21 CFR 74.3602) to provide for the safe use of D&C Violet No. 2 as a color additive in absorbable sutures prepared from homopolymers of glycolide for general surgery. The

petitioner also proposes that the nomenclature polyglactin 910 (glycolic-lactic acid polyester) be revised to the generic nomenclature 90 percent glycolide and 10 percent L-lactide.

The agency has determined under 21 CFR 25.32(l) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: May 5, 1999.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–13980 Filed 6–2–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service has submitted the collection of information listed below to OMB for approval under the provisions of the Paperwork Reduction Act. A copy of the information collection requirement is included in this notice. If you wish to obtain copies of the proposed information collection requirement, related forms, and explanatory material, contact the Service Information Collection Clearance Officer at the address listed below.

DATES: OMB has up to 60 days to approve or disapprove information collection but may respond after 30 days. Therefore, to ensure maximum consideration, you must submit comments on or before July 6, 1999.

ADDRESSES: Send your comments on the requirement to the Office of Management and Budget, Attention: Department of the Interior Desk Officer, 725 17th Street, N.W., Washington, D.C. 20503, and to Rebecca Mullin, Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, ms 222–ARLSQ, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact Rebecca A. Mullin at (703)358–2287, or electronically to rmullin@fws.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). The U.S. Fish and Wildlife Service (We) has submitted a request to OMB to renew its approval of the collection of information for the Mourning Dove Call-Count Survey. We are requesting a 3-year term of approval for this information collection activity. A previous 60-day notice on this information collection requirement was published in the February 16, 1999 (64 FR 7660) **Federal Register** inviting public comment. No comments on the previous notice were received as of April 20, 1999. This notice provides an additional 30 days in which to comment on the following information.

Federal agencies 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 number for this collection of information is 1018–0010.

The Migratory Bird Treaty Act (16 U.S.C. 703–711) and Fish and Wildlife Act of 1956 (16 U.S.C. 742d) designate the Department of the Interior as the key agency responsible for the wise management of migratory bird populations frequenting the United States and for the setting of hunting regulations that allow appropriate harvests that are within the guidelines that will allow for those populations' well being. These responsibilities dictate the gathering of accurate data on various characteristics of migratory bird populations. The Mourning Dove Call-Count Survey is an essential part of the migratory bird management program. The survey is a cooperative effort between us and State wildlife agencies. It is conducted each spring by State and Service biologists to provide the necessary data to determine the population status of the mourning dove. The survey results are then used to help guide us and the States in the annual promulgation of regulations for hunting mourning doves. Survey data are also used to plan and evaluate dove management programs and provide specific information necessary for dove research. If this survey were not used, there would be no way to determine the population status of mourning doves prior to setting regulations.

Title: Mourning Dove Call-Count Survey.

Approval Number: 1018–0010.

Service Form Number: 3–159.

Frequency of Collection: Annually.

Description of Respondents: State, local, tribal, provincial, or Federal employees.

Total Annual Burden Hours: The reporting burden is estimated to average 2.5 hours per respondent. The Total Annual Burden hours is 2,655 hours.

Total Annual Responses: About 1,062 individuals are expected to participate in the survey.

We invite comments concerning this renewal on: (1) Whether the collection of information is necessary for the proper performance of our migratory bird management functions, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of the collection of information on respondents. The information collections in this program are part of a system of record covered by the Privacy Act (5 U.S.C. 552(a)).

Dated: May 5, 1999.

Daniel M. Ashe,

Assistant Director for Refuges and Wildlife.

[FR Doc. 99–14037 Filed 6–2–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service has submitted the collection of information listed below to OMB for approval under the provisions of the Paperwork Reduction Act. A copy of the information collection requirement is included in this notice. If you wish to obtain copies of the proposed information collection requirement, related forms, and explanatory material, contact the Service Information Collection Clearance Officer at the address listed below.

DATES: OMB has up to 60 days to approve or disapprove information collection but may respond after 30 days. Therefore, to ensure maximum

consideration, you must submit comments on or before July 6, 1999.

ADDRESSES: Send your comments on the requirement to the Office of Management and Budget, Attention: Department of the Interior Desk Officer, 725 17th Street, N.W., Washington, D.C. 20503, and to Rebecca Mullin, Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, ms 222–ARLSQ, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact Rebecca A. Mullin at (703) 358–2287, or electronically to rmullin@fws.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). The U.S. Fish and Wildlife Service (We) has submitted a request to OMB to renew its approval of the collection of information for the North American Woodcock Singing Ground Survey. We are requesting a 3-year term of approval for this information collection activity. A previous 60-day notice on this information collection requirement was published in the February 16, 1999 (64 FR 7660) **Federal Register** inviting public comment. No comments on the previous notice were received as of April 20, 1999. This notice provides an additional 30 days in which to comment on the following information.

Federal agencies 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 number for this collection of information is 1018–0019.

The Migratory Bird Treaty Act (16 U.S.C. 703–711) and Fish and Wildlife Act of 1956 (16 U.S.C. 742d) designate the Department of the Interior as the key agency responsible for the wise management of migratory bird populations frequenting the United States and for the setting of hunting regulations that allow appropriate harvests that are within the guidelines that will allow for those populations' well being. These responsibilities dictate the gathering of accurate data on various characteristics of migratory bird populations. The North American Woodcock Singing-Ground Survey is an essential part of the migratory bird management program. This survey is conducted annually by State and Federal conservation agencies to provide the necessary data to determine the population status of the woodcock. In addition, the information is vital in assessing the relative changes in the geographic distribution of the woodcock. The information is used primarily by us to develop recommendations for hunting regulations. It is also used by us, State conservation agencies, University associates and other interested parties for various research and management projects. Without information on the population's status, we might promulgate hunting regulations that were too liberal thus causing harm to the woodcock population, or too conservative, thus unduly restricting recreational opportunities afforded by woodcock hunting.

Title: North American Woodcock Singing Ground Survey.

Approval Number: 1018–0019.

Service Form Number: 3–156.

Frequency of Collection: Annually.

Description of Respondents: State, local, tribal, provincial, or Federal employees.

Total Annual Burden Hours: The reporting burden is estimated to average 0.67 hours per respondent. The Total Annual Burden hours is 500 hours.

Total Annual Responses: About 750 individuals are expected to participate in the survey.

We invite comments concerning this renewal on: (1) Whether the collection of information is necessary for the proper performance of our migratory bird management functions, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of the collection of information on respondents. The information collections in this program are part of a system of record covered by the Privacy Act (5 U.S.C. 552(a)).

Dated: May 5, 1999.

Daniel M. Ashe,

Assistant Director for Refuges and Wildlife.

[FR Doc. 99–14038 Filed 6–2–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for the Maytag Trail, Douglas County, Colorado

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: This notice advises the public that Douglas County has applied to the Fish and Wildlife Service for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. The proposed permit would authorize the incidental take of the Preble's meadow jumping mouse (*Zopos hudsonius prebei*), federally listed as threatened, and loss and modification of its habitat associated with construction and use of a pedestrian and equestrian trail in Douglas County, Colorado. The permit would be in effect for 3 years.

We announce the receipt of the County's incidental take permit application that includes a proposed Low-Effect Habitat Conservation Plan for the Peble's meadow jumping mouse for the Maytag trail project. The proposed Habitat Conservation Plan is available for public comment. It fully describes the proposed project and the measures the County would undertake to minimize and mitigate project impacts to the Preble's meadow jumping mouse. We have made a preliminary determination that the County's Plan qualifies as a ''low-effect'' habitat conservation plan eligible for categorical exclusion under the National Environmental Policy Act. We explain the basis for this determination in an Environmental Action Statement, which is also available for public review. This notice is provided pursuant to section 10 (c) of the Act.

DATES: Written comments on the permit application and Plan should be received on or before July 6, 1999.

ADDRESSES: Comments regarding the permit application or the plan should be addressed to LeRoy Carlson, Field Supervisor, Fish and Wildlife Service, Colorado Field Office, P.O. Box 25486, DFC, Denver, CO 80225–0207. Comments may be sent by facsimile to (303) 275–2371.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen Linder, Fish and Wildlife Biologist, Colorado Field Office, telephone (303) 275–2370.

SUPPLEMENTARY INFORMATION:

Document Availability

Individuals wishing copies of the habitat conservation plan and associated documents for review should immediately contact the above office. Documents also will be available for public inspection, by appointment, during normal business hours at the above address.

Background

Section 9 of the Act and Federal regulation prohibit the ''take'' of a species listed as endangered or threatened, respectively (take is defined under the Act, in part, as to kill, harm, or harass a federally listed species). However, we may issue permits to authorize ''incidental take'' (defined by the Act as take that is incidental to, and not the purposed of, the carrying out of an otherwise lawful activity) of listed species under limited circumstances. Regulations governing permits for threatened species are promulgated in 50 CFR 17.32; regulations governing permits for endangered species are promulgated in 50 CFR 17.22.

The Maytag Trail would be located on Douglas County open space property. The Maytag Trail is a component of a regional trail system. The proposed trail and associated facilities will consist of:

A main trail 8 feet wide and about 5,820 feet long;

Two trail loops 4 feet wide and about 3,030 feet long;

A trail overlook encompassing about 0.25 acres; and

A trailhead consisting of about 1.4 acres.

The trail surface will be soft (crusher fines or crushed recycled concrete) or native surface as appropriate for the trail segment considering use and drainage.

Only one federally listed species, the threatened Preble's meadow jumping mouse occurs on site and has the potential to be adversely affected by the proposed trail project. To minimize and mitigate impacts that may result from incidental take of the mouse, the Country has agreed to: (1) coordinate with the Colorado Division of Wildlife to design and align the trail to minimize potential impacts to the mouse; (2) plant 20 gambel oaks (south gulch crossing) and 25 coyote willows (north gulch crossing) where the trail crosses mouse habitat to provide additional cover in the vicinity of the trail; (3) provide only in-kind services to the Colorado Division of Wildlife to assist them in determining the effects of the trail on the mouse; (4) manage the riparian areas of the property for mouse conservation; and (5) limit trail use and construction to daylight hours when the mouse is inactive.

We have made a preliminary determination that the County's Plan qualifies as a ''low-effect'' habitat conservation plan as defined by our Habitat Conservation Planning Handbook (November 1996). Low-effect habitat conservation plans are those involving: (1) minor or negligible effects on federally listed and candidate species and their habitats; and (2) minor or negligible effects on other environmental values or resources. The Maytag Trail Plan qualifies as a low-effect habitat conservation plan for the following reasons:

1. Approval of the Plan would result in minor or negligible effects on the mouse and its habitat. The County's management of the property as open space will likely have beneficial effects to the mouse. We do not anticipate significant direct or cumulative effects to the mouse resulting from construction or use of the trail.

3. Approval of the Plan would not result in any cumulative or growth inducing impacts and, therefore, would not result in significant adverse effects on public health or safety.

4. The Project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a Federal, State, local, or Tribal law or requirement imposed for the protection of the environment.

5. Approval of the Plan would not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

We, therefore, have preliminarily determined that approval of the Plan as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). Based upon this preliminary determination, we do not intend to prepare further National Environmental Policy Act documentation. We will consider public comments in making a final determination on whether to prepare such additional documentation.

This notice is provided pursuant to section 10(c) of the Act. We will evaluate the permit application, the Plan, and comments submitted therein to determine whether the application meets the requirements of section 10(a) of the Act. If it is determined that those requirements are met, a permit will be issued for the incidental take of the Preble's meadow jumping mouse in conjunction with the construction and use of the Maytag Trail. The final permit decision will be made no sooner than 30 days from the date of this notice.

Dated: May 26, 1999.

Terry T. Terrell,

Deputy Regional Director, Region 6.

[FR Doc. 99–14004 Filed 6–2–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the First Amendment to the Tribal/State Compact for Class III Gaming between the Kalispel Tribe of Indians and the State of Washington, which was executed on March 4, 1999.

DATES: This action is effective on June 3, 1999.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: May 20, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–13999 Filed 6–2–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Privacy Act of 1974, as Amended; System of Records

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of minor changes to a system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior is updating a system of records managed by the Bureau of Reclamation (Reclamation). The changes are to the

system of records ''Lower Colorado River Well Inventory, WBR–48'' which is published in its entirety below.

DATES: These actions are effective June 3, 1999.

FOR FURTHER INFORMATION CONTACT: For information regarding ''Lower Colorado River Well Inventory, WBR–48'' contact Mr. Jeffrey Addiego, Hydraulic Engineer, Boulder Canyon Operations Office at (702) 293–8525. For general information regarding Reclamation's Privacy Act program, contact Mr. Casey Snyder at (303) 445–2048.

SUPPLEMENTARY INFORMATION: When originally published in the **Federal Register** this system of records was identified with an organization prefix of ''BOR'' (e.g., BOR–48). The content of the system of records is the same; the prefix on this system was changed to reflect organizational changes.

This system of records notice was previously published in the **Federal Register** on April 7, 1995 (60 FR 17805). This publication revises the system location, storage, and the system manager and address. All other changes proposed are editorial in nature.

Murlin Coffey,

Manager, Property and Office Services.

INTERIOR/WBR–48

SYSTEM NAME:

Lower Colorado River Well Inventory.

SYSTEM LOCATION:

U.S. Geological Survey, 520 North Park Avenue, Suite 221, Tucson, Arizona 85719 (paper records are temporarily stored, waiting for entry into the U.S. Geological Survey system, at Bureau of Reclamation, Yuma Area Office, 7301 Calle Agua Salada, Yuma, Arizona 85364).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and/or their lessees who have at least one well on their property that may pump mainstream Colorado River water. Note: This system also contains records pertaining to corporations and other public entities. Only those records relating to individuals are covered by the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, addresses, and telephone numbers of covered individuals; Assessor Parcel Numbers; contract numbers; categories of uses to which the water is put; methods of disposal of unconsumed portions of water pumped; volumes of water pumped; physical characteristics and locations of wells; water purveyor, municipal, or other administrative boundaries within which wells are located; and water levels of wells located in hydraulically connected areas adjacent to the flood plain.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Reclamation Act of June 17, 1902, (32 Stat. 388, 43 U.S.C. 391), as amended and supplemented; the Colorado River Front Work and Levee System Adjacent to Yuma Project Act of March 3, 1925, (Pub. L. 79–469, 43 Stat. 1186, 1198), as amended and supplemented; the Boulder Canyon Project Act of December 21, 1928, (45 Stat. 1057, 43 U.S.C. 617), as amended and supplemented; the Reclamation Project Act of August 4, 1939, (53 Stat. 1187, 43 U.S.C. 485); the Colorado River Basin Project Act of September 30, 1968, (82 Stat. 885); the Reclamation Reform Act of October 12, 1982, (96 Stat. 1261, 43 U.S.C. 390); and the Supreme Court opinion rendered June 3, 1963, (373 U.S. 546), and Decrees entered March 9, 1964, (376 U.S. 340), January 9, 1979, (439 U.S. 419), and April 16, 1984, (466 U.S. 144), in *Arizona* v. *California et al.*

PURPOSE(S):

The primary purposes of the records are: (a) To assist in the administration and negotiation of water use contracts with individual landowners, lessees, or other classes of water users; and (b) to support the annual compilation and publication of records of consumptive use of mainstream Colorado River water.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure outside the Department of the Interior may be made to: (1) The States of Arizona, California, and Nevada to assist them in administering their apportionments of mainstream Colorado River water; (2) Another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains; (3) The Department of Justice, or to a court, adjudicative, or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when: (a) One of the following is a party to the proceeding or has an interest in the proceeding: (i) The Department or any component of the Department; (ii) Any Departmental employee acting in his or her official capacity; (iii) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or (iv) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and (b) The Department deems the disclosure to be: (i) Relevant and necessary to the proceedings; and (ii) Compatible with the purpose for which we compiled the information; (4) The appropriate Federal, State, tribal, local, or foreign governmental agency that is responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, order, or license, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, order, or license; (5) A congressional office in response to an inquiry to that office by the individual to whom the records pertain.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 168a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in automated form on computer databases and in manual form in file folders at the U.S. Geological Survey, and in manual form in file folders at the Bureau of Reclamation.

RETRIEVABILITY:

Records stored in computer databases will be retrievable by any record category. Records stored in manual files will be retrievable by name of property owner or contract holder.

SAFEGUARDS:

Data will be maintained with safeguards meeting the requirements of 43 CFR 2.51 for manual and computerized records.

RETENTION AND DISPOSAL:

In accordance with approved retention and disposal schedules, records will be retained in the Bureau of Reclamation for 10 years, relocated to the Federal Records Center and retained there for an additional 75 years, and then transferred to the National Archives and Records Administration for permanent retention.

SYSTEM MANAGER(S) AND ADDRESS:

U.S. Geological Survey (NWIS), 520 North Park Avenue, Suite 221, Tucson, Arizona 85719; and/or Bureau of Reclamation, Yuma Area Office, 7301

Calle Agua Salada, Yuma, Arizona 85364.

NOTIFICATION PROCEDURE:

An individual requesting notification of the existence of records on him or her should address his/her request to the System Manager. The request must be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

An individual requesting access to records maintained on him or her should address his/her request to the System Manager. The request must be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

An individual requesting amendment of a record maintained on him or her should address his/her request to the System Manager. The request must be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individuals on whom records are maintained, state and county well permits, land ownership and water use records and databases, and the U.S. Geological Survey Ground Water Site Inventory database.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–14006 Filed 6–2–99; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Privacy Act of 1974, as Amended; Systems of Records

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of minor changes to 14 systems of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes minor changes to 14 systems of records managed by the Bureau of Reclamation (Reclamation). These notices are published in their entirety below.

DATES: These actions are effective June 3, 1999.

FOR FURTHER INFORMATION CONTACT: For information regarding these systems of records contact Mr. Stan Seigal, Chief Realty Officer, Policy Office at (303) 445–2915. For general information regarding Reclamation's Privacy Act program, contact Mr. Casey Snyder at (303) 445–2048.

SUPPLEMENTARY INFORMATION: Recent Privacy Act Compilations list the following systems of records with a prefix of ''Reclamation'' (e.g., Reclamation-13). When originally published in the **Federal Register** these systems of records were identified with an organization prefix of ''LBR'' (e.g., LBR–13). The content of the systems of records is the same; the prefixes on these systems were changed to reflect organizational changes.

The system of records notices being revised and the reason for revision are listed below:

This publication revises the system locations; a ''purpose(s)'' section has been added which was not included in the original notices; the routine uses, system manager's titles, and addresses have been updated. All other changes are editorial in nature.

''Irrigation Management Service, WBR–13,'' previously published in the **Federal Register** on April 11, 1977 (42 FR 19098); ''Land Exchange, WBR–14,'' previously published in the **Federal Register** on April 11, 1977 (42 FR 19098); ''Land Settlement Entries, WBR–15,'' previously published in the **Federal Register** on April 11, 1977 (42 FR 19099); ''Lands—Leases, Sales, Rentals, and Transfers, WBR–17;'' previously published in the **Federal Register** on April 11, 1977 (42 FR 19099); ''Mineral Location Entries, WBR–19;'' previously published in the **Federal Register** on April 11, 1977 (42 FR 19100); ''Oil and Gas Applications, WBR–22;'' previously published in the **Federal Register** on April 11, 1977 (42 FR 19101); ''Real Property and Right-of-Way Acquisitions, WBR–28;'' previously published in the **Federal Register** on April 11, 1977 (42 FR 19103); ''Right-of-Way Applications, WBR–29;'' previously published in the **Federal Register** on April 11, 1977 (42 FR 19104); ''Special Use Applications, Licenses, and Permits, WBR–32;'' previously published in the **Federal Register** on April 11, 1977 (42 FR 19105); ''Trespass Cases, WBR–37;'' previously published in the **Federal Register** on April 11, 1977 (42 FR 19106); ''Water Right Applications, WBR–38;'' previously published in the **Federal Register** on April 11, 1977 (42 FR 19107); ''Water Rights Acquisition, WBR–39;'' previously published in the **Federal Register** on April 11, 1977 (42 FR 19107); ''Water Sales and Delivery Contracts, WBR–40;'' previously published in the **Federal Register** on April 11, 1977 (42 FR 19107); and ''Permits, WBR–41;'' previously published in the **Federal Register** on April 11, 1977 (42 FR 19108).

Murlin Coffey,

Manager, Property and Office Services.

INTERIOR/WBR–13

SYSTEM NAME:

Irrigation Management Service.

SYSTEM LOCATION:

Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals receiving irrigation waters from Bureau of Reclamation constructed facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computer input, storage, and output concerning water usage.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

43 U.S.C. 371, et seq.

PURPOSE(S):

The primary use of the record is to assist farmers on Federal projects in the selection of the proper amounts and timing of irrigation deliveries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures outside the Department of the Interior may be made to: (1) Another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains; (2) The Department of Justice, or to a court, adjudicative, or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when: (a) One of the following is a party to the proceeding or has an interest in the proceeding: (i) The Department or any component of the Department; (ii) Any Departmental employee acting in his or her official capacity; (iii) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or (iv) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and (b) The Department deems the disclosure to be: (i) Relevant and necessary to the proceedings; and (ii) Compatible with the purpose for which we compiled the information; (3) The appropriate Federal, State, tribal, local, or foreign governmental agency that is responsible

for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, order, or license, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, order, or license; (4) A congressional office in response to an inquiry to that office by the individual to whom the records pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

On computer media.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

In accordance with the requirements of 43 CFR 2.51 for computer and manual records.

RETENTION AND DISPOSAL:

In accordance with approved retention and disposal schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Realty Officers in the Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

NOTIFICATION PROCEDURE:

Written inquiries regarding the existence of record(s) should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Same as Notification above. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

Written petitions for amendment should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

INTERIOR/WBR–14

SYSTEM NAME:

Land Exchange.

SYSTEM LOCATION:

Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual land exchange for Bureau of Reclamation purposes.

CATEGORIES OF RECORDS IN THE SYSTEM:

General subject of exchange of certain unpatented or private land by certain qualified applicant's whose lands have been determined to be insufficient to support a family and to exchange lands for the purpose of relocating acquired or improved Government properties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 14, Reclamation Project Act, 1939 (53 Stat. 1187) and 43 U.S.C. 371, *et seq.*

PURPOSE(S):

The primary uses of the records are to maintain a history of land exchange and to protect individual rights.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures outside the Department of the Interior may be made to: (1) Another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains; (2) The Department of Justice, or to a court, adjudicative, or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when: (a) One of the following is a party to the proceeding or has an interest in the proceeding: (i) The Department or any component of the Department; (ii) Any Departmental employee acting in his or her official capacity; (iii) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or (iv) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and (b) The Department deems the disclosure to be: (i) Relevant and necessary to the proceedings; and (ii) Compatible with the purpose for which we compiled the information; (3) The appropriate Federal, State, tribal, local, or foreign governmental agency that is responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, order, or license, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, order, or license; (4) A congressional office in response to an inquiry to that office by the individual to whom the records pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders by appropriate file codes.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

In accordance with the requirements of 43 CFR 2.51 for computer and manual records.

RETENTION AND DISPOSAL:

In accordance with approved retention and disposal schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Realty Officers in the Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

NOTIFICATION PROCEDURE:

Written inquiries regarding the existence of record(s) should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Same as Notification above. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

Written petitions for amendment should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Information comes from the individual as well as the office involved.

INTERIOR/WBR–15

SYSTEM NAME:

Land Settlement Entries.

SYSTEM LOCATION:

Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual applicants who wish to settle on lands on Federal Bureau of Reclamation Projects.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Applications including information as to character of individual applicant, veteran preference rights,

farming experience, assets (financial), health, appeals, and data concerning homesteading and applicant meeting requirements; (2) Notice to Land Office that homesteader has fulfilled requirements; and (3) Data with Department of Agriculture as to applicability for loan.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) Section 4, Fact Finders Act of December 5, 1924, (43 Stat. 702); (2) section 3, The Reclamation Act of June 17, 1902, (1093–32 Stat. 388 and amendments); (3) Patents to Disabled Soldier Entrymen Act of March 1, 1921, (102–41 Stat. 1202); (4) Amend Patents to Disabled Soldier Entrymen Act of April 7, 1921, (125–42 Stat. 492 and amendments); (5) Section 44, The Omnibus Adjustment Act (44 Stat. 636); and (6) Farm Unit Exchange Act of August 13, 1953, (428–67 Stat. 566).

PURPOSE(S):

The primary uses of the records are to administer the settler program and to determine if applicant is qualified to farm unit.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures outside the Department of the Interior may be made to: (1) Another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains; (2) The Department of Justice, or to a court, adjudicative, or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when: (a) One of the following is a party to the proceeding or has an interest in the proceeding: (i) The Department or any component of the Department; (ii) Any Departmental employee acting in his or her official capacity; (iii) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or (iv) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and (b) The Department deems the disclosure to be: (i) Relevant and necessary to the proceedings; and (ii) Compatible with the purpose for which we compiled the information; (3) The appropriate Federal, State, tribal, local, or foreign governmental agency that is responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, order, or license, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, order, or license; (4) A congressional office in response to an inquiry to that office by the individual to whom the records pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Complete file maintained in manual form in file folders.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

In accordance with the requirements of 43 CFR 2.51 for manual records.

RETENTION AND DISPOSAL:

In accordance with approved retention and disposal schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Realty Officers in the Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

NOTIFICATION PROCEDURE:

Written inquiries regarding the existence of record(s) should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.63.

RECORD ACCESS PROCEDURES:

Same as Notification above. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

Written petitions for amendment should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

INTERIOR/WBR–17

SYSTEM NAME:

Lands—Leases, Sales, Rentals, and Transfers.

SYSTEM LOCATION:

Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individuals who are applicants to lease, purchase, rent, or transfer lands; and (2) Individuals who are successful applicants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Notice of Availability of lands (advertising) requests, contracts, renewals, and other supporting data concerning the sale, lease, rental, or transfer of Bureau of Reclamation-owned lands.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) Taylor Grazing Act of June 28, 1934; (2) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; (3) Sale of Unproductive Public Land Act of May 16, 1930; (4) Section 4 of the Columbia Basin Project Act of March 10, 1943; (5) Disposal of Small Tracts Act of March 31, 1950; (6) Federal Property and Administrative Act of 1949 and amendments; (7) Sale of Surplus Acquired Lands Act of February 2, 1911; (8) Sale of Surplus Improved Public Lands Act of May 20, 1920; (9) Reclamation Project Act of 1939; and (10) Reappraisal of Unsold Town Lots Act of June 11, 1910.

PURPOSE(S):

The primary uses of the records are to (a) make known to interested individuals lands available for lease, sale, or rental; and (b) administer leases, sales, rentals, and transfers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures outside the Department of the Interior may be made to: (1) Another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains; (2) The Department of Justice, or to a court, adjudicative, or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when: (a) One of the following is a party to the proceeding or has an interest in the proceeding: (i) The Department or any component of the Department; (ii) Any Departmental employee acting in his or her official capacity; (iii) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or (iv) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and (b) The Department deems the disclosure to be: (i) Relevant and necessary to the proceedings; and (ii) Compatible with the purpose for which we compiled the information; (3) The appropriate Federal, State, tribal, local, or foreign governmental agency that is responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, order, or license, when we

become aware of an indication of a violation or potential violation of the statute, rule, regulation, order, or license; (4) A congressional office in response to an inquiry to that office by the individual to whom the records pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Complete file maintained in manual form in file folders.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

In accordance with the requirements of 43 CFR 2.51 for manual records.

RETENTION AND DISPOSAL:

In accordance with approved retention and disposal schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Realty Officers in the Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

NOTIFICATION PROCEDURE:

Written inquiries regarding the existence of record(s) should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Same as Notification above. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

Written petitions for amendment should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained, county recorder, title companies, surveyors, and appraisers.

INTERIOR/WBR–19

SYSTEM NAME:

Mineral Location Entries.

SYSTEM LOCATION:

Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual who has mineral entry on land Bureau of Reclamation needs for reclamation purposes.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data concerning entry and final disposition of claim.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Vacation of Withdrawals of Public Lands Containing Minerals Act of April 23, 1932, 47 Stat. 136.

PURPOSE(S):

The primary uses of the records are to determine disposition of claims.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures outside the Department of the Interior may be made to: (1) Another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains; (2) The Department of Justice, or to a court, adjudicative, or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when: (a) One of the following is a party to the proceeding or has an interest in the proceeding: (i) The Department or any component of the Department; (ii) Any Departmental employee acting in his or her official capacity; (iii) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or (iv) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and (b) The Department deems the disclosure to be: (i) Relevant and necessary to the proceedings; and (ii) Compatible with the purpose for which we compiled the information; (3) The appropriate Federal, State, tribal, local, or foreign governmental agency that is responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, order, or license, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, order, or license; (4) A congressional office in response to an inquiry to that office by the individual to whom the records pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Complete file maintained in manual form in file folders.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

In accordance with the requirements of 43 CFR 2.51 for manual records.

RETENTION AND DISPOSAL:

In accordance with approved retention and disposal schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Realty Officers in the Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

NOTIFICATION PROCEDURE:

Written inquiries regarding the existence of record(s) should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Same as Notification above. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

Written petitions for amendment should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

INTERIOR/WBR–22

SYSTEM NAME:

Oil and Gas Applications.

SYSTEM LOCATION:

Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed for oil and gas leases.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications under the Mineral Leasing Act of February 25, 1920, as amended, 30 U.S.C. 181, *et seq.* Applications are identified by Bureau of Land Management serial numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

30 U.S.C. 181, *et seq.*, and 44 U.S.C. 3101.

PURPOSE(S):

The primary uses of the records are for proof and purpose of applications and land status information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures outside the Department of the Interior may be made to: (1) Another Federal agency to enable that agency to

respond to an inquiry by the individual to whom the record pertains; (2) The Department of Justice, or to a court, adjudicative, or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when: (a) One of the following is a party to the proceeding or has an interest in the proceeding: (i) The Department or any component of the Department; (ii) Any Departmental employee acting in his or her official capacity; (iii) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or (iv) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and (b) The Department deems the disclosure to be: (i) Relevant and necessary to the proceedings; and (ii) Compatible with the purpose for which we compiled the information; (3) The appropriate Federal, State, tribal, local, or foreign governmental agency that is responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, order, or license, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, order, or license; (4) A congressional office in response to an inquiry to that office by the individual to whom the records pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Complete file maintained in manual form in file folders.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

In accordance with safeguards meeting the requirements of 43 CFR 2.51 for manual records.

RETENTION AND DISPOSAL:

In accordance with approved retention and disposal schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Realty Officers in the Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

NOTIFICATION PROCEDURE:

Written inquiries regarding the existence of record(s) should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Same as Notification above. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

Written petitions for amendment should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual on whom record is maintained.

INTERIOR/WBR–28

SYSTEM NAME:

Real Property and Right-of-Way Acquisitions.

SYSTEM LOCATION:

Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individual landowners from whom the Bureau of Reclamation has purchased or condemned land, exercised reserved right-of-way, or received donation deeds; or (2) from whom the Bureau of Reclamation is in the process of acquiring land or interests therein.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains records concerning acquisition of land or right-of-way, including correspondence, appraisal reports, land descriptions, releases of prior liens, contracts to purchase, agreements between landowners and the Bureau of Reclamation, Notice of Exercise of Right-of-Way, payment data, copies of condemnation actions, and other supporting data required in specific transactions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) The Reclamation Act of 1902, as amended, and acts supplemental thereto; 43 U.S.C. 371, *et seq.*; (2) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4651, *et seq.*; and (3) Rights of Way Reserved to United States for Canals and Ditches Act of August 30, 1890, (26 Stat. 391), as amended.

PURPOSE(S):

The primary uses of the records are to maintain record of ownership of lands and rights-of-way acquired for Reclamation purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure outside the Department of the Interior may be made (1) to transfer administration of the land for transmission of power, recreation, fish and wildlife activities, and other purposes as required to another Federal agency, State, and local government; (2) to transmit deeds to local County government to record ownership data; (3) to furnish copy of deed to appropriate irrigation district operating the irrigation system to advise right-of-way available in operating the system; (4) to transmit documents to Department of Justice for title opinion; (5) Another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains; (6) The Department of Justice, or to a court, adjudicative, or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when: (a) One of the following is a party to the proceeding or has an interest in the proceeding: (i) The Department or any component of the Department; (ii) Any Departmental employee acting in his or her official capacity; (iii) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or (iv) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and (b) The Department deems the disclosure to be: (i) Relevant and necessary to the proceedings; and (ii) Compatible with the purpose for which we compiled the information; (7) The appropriate Federal, State, tribal, local, or foreign governmental agency that is responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, order, or license, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, order, or license; (8) A congressional office in response to an inquiry to that office by the individual to whom the records pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Complete file maintained in manual form in file folders.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

In accordance with the requirements of 43 CFR 2.51 for manual records.

RETENTION AND DISPOSAL:

In accordance with approved retention and disposal schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Realty Officers in the Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

NOTIFICATION PROCEDURE:

Written inquiries regarding the existence of record(s) should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Same as Notification above. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

Written petitions for amendment should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual landowners, county recorders, and title companies.

INTERIOR/WBR–29

SYSTEM NAME:

Right-of-Way Applications.

SYSTEM LOCATION:

Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for right-of-way may or may not be identified by Bureau of Land Management serial numbers, land description, value, and instrument of ownership.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications for right-of-way.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Reclamation Act of 1902, as amended, and acts supplementary thereto, 43 U.S.C. 371, et seq.

PURPOSE(S):

The primary uses of the records are to maintain land status information and proof of right-of-way permits for legal purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures outside the Department of the Interior may be made to: (1) Another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains; (2) The Department of Justice, or to a court, adjudicative, or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when: (a) One of the following is a party to the proceeding or has an interest in the proceeding: (i) The Department or any component of the Department; (ii) Any Departmental employee acting in his or her official capacity; (iii) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or (iv) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and (b) The Department deems the disclosure to be: (i) Relevant and necessary to the proceedings; and (ii) Compatible with the purpose for which we compiled the information; (3) The appropriate Federal, State, tribal, local, or foreign governmental agency that is responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, order, or license, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, order, or license; (4) A congressional office in response to an inquiry to that office by the individual to whom the records pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Complete file maintained in manual form in file folders.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

In accordance with the requirements of 43 CFR 2.51 for manual records.

RETENTION AND DISPOSAL:

In accordance with approved retention and disposal schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Realty Officers in the Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

NOTIFICATION PROCEDURE:

Written inquiries regarding the existence of record(s) should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Same as Notification above. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

Written petitions for amendment should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual on whom record is maintained, county recorders, and title companies.

INTERIOR/WBR–32

SYSTEM NAME:

Special Use Applications, Licenses, and Permits.

SYSTEM LOCATION:

Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who secure licenses and permits concerning Bureau of Reclamation-owned facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications, licenses, permits, and miscellaneous supporting data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Reclamation Act of 1902, as amended, and acts supplemental thereto, 43 U.S.C. 371, *et seq.*

PURPOSE(S):

The primary uses of the records are (a) to administer Bureau of Reclamation-owned lands and facilities; and (b) to allow individuals, firms, or other Government entities to use Bureau of Reclamation lands for special limited uses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures outside the Department of the Interior may be made to: (1) Another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains; (2) The Department of Justice, or to a court, adjudicative, or other administrative body, or to a party in litigation before a court or adjudicative or administrative

body, when: (a) One of the following is a party to the proceeding or has an interest in the proceeding: (i) The Department or any component of the Department; (ii) Any Departmental employee acting in his or her official capacity; (iii) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or (iv) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and (b) The Department deems the disclosure to be: (i) Relevant and necessary to the proceedings; and (ii) Compatible with the purpose for which we compiled the information; (3) The appropriate Federal, State, tribal, local, or foreign governmental agency that is responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, order, or license, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, order, or license; (4) A congressional office in response to an inquiry to that office by the individual to whom the records pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Complete file maintained in manual form in file folders.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

In accordance with the requirements of 43 CFR 2.51 for manual records.

RETENTION AND DISPOSAL:

In accordance with approved retention and disposal schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Realty Officers in the Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

NOTIFICATION PROCEDURE:

Written inquiries regarding the existence of record(s) should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Same as Notification above. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

Written petitions for amendment should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual on whom record is maintained.

INTERIOR/WBR–37

SYSTEM NAME:

Trespass Cases.

SYSTEM LOCATION:

Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual who trespasses on Government-owned property.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains correspondence regarding trespass, interim problems, and final disposition of case.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Reclamation Act of 1902, as amended, and acts supplementary thereto, 43 U.S.C. 371, *et seq.*

PURPOSE(S):

The primary uses of the records are to document final disposition of trespass cases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures outside the Department of the Interior may be made to: (1) Another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains; (2) The Department of Justice, or to a court, adjudicative, or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when: (a) One of the following is a party to the proceeding or has an interest in the proceeding: (i) The Department or any component of the Department; (ii) Any Departmental employee acting in his or her official capacity; (iii) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or (iv) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and (b) The Department deems the disclosure to be: (i) Relevant and necessary to the proceedings; and (ii) Compatible with the purpose for which we compiled the information; (3) The appropriate Federal, State, tribal, local, or foreign governmental agency that is responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, order, or license, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, order, or license; (4) A congressional office in response to an inquiry to that office by the individual to whom the records pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Complete file maintained in manual form in file folders.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

In accordance with the requirements of 43 CFR 2.51 for manual records.

RETENTION AND DISPOSAL:

In accordance with approved retention and disposal schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Realty Officers in the Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Under the specific exemption authority provided by 5 U.S.C 552a(k)(2), the Department of the Interior has adopted a regulation, 43 CFR 2.79(b), which exempts this system from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I); and (f); and the portions of 43 CFR, part 2, subpart C which implement these provisions. The reasons for adoption of this regulation are set out at 40 FR 37217 (August 26, 1975).

INTERIOR/WBR–38

SYSTEM NAME:

Water Right Applications.

SYSTEM LOCATION:

Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual homesteaders who are eligible to receive water right certificates.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual water right applications and supporting papers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) The Reclamation Act of 1902, as amended, and acts supplementary thereto, 43 U.S.C. 371, *et seq.*; and (2) Patents and Water-Right Certificates Act of August 9, 1912, (37 Stat. 265), and any acts amendatory or supplementary thereto.

PURPOSE(S):

The primary uses of the records are (a) for administration and negotiation of water right applications with individual landowners; and (b) to entitle purchaser of water right certificate to final water right certificate upon completion of statutory requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures outside the Department of the Interior may be made to: (1) Another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains; (2) The Department of Justice, or to a court, adjudicative, or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when: (a) One of the following is a party to the proceeding or has an interest in the proceeding: (i) The Department or any component of the Department; (ii) Any Departmental employee acting in his or her official capacity; (iii) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or (iv) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and (b) The Department deems the disclosure to be: (i) Relevant and necessary to the proceedings; and (ii) Compatible with the purpose for which we compiled the information; (3) The appropriate Federal, State, tribal, local, or foreign governmental agency that is responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, order, or license, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, order, or license; (4) A congressional office in response to an inquiry to that office by the individual to whom the records pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Complete file maintained in manual form in file folders.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

In accordance with the requirements of 43 CFR 2.51 for manual records.

RETENTION AND DISPOSAL:

In accordance with approved retention and disposal schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Realty Officers in the Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

NOTIFICATION PROCEDURE:

Written inquiries regarding the existence of record(s) should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Same as Notification above. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

Written petitions for amendment should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

INTERIOR/WBR–39

SYSTEM NAME:

Water Rights Acquisition.

SYSTEM LOCATION:

Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Material pertaining to acquisition by the Bureau of Reclamation, by purchase or donation, etc., of water rights by others.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual water service and agreements on diversion of water and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Reclamation Act of 1902, (Section 8, 43 U.S.C. 372, 383), as amended, and acts supplementary thereto.

PURPOSE(S):

The primary uses of the records are for administration and negotiation of individual water service and agreements on division of water.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures outside the Department of the Interior may be made to: (1) Another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains; (2) The Department of Justice, or to a court, adjudicative, or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when: (a) One of the following is a party to the proceeding or has an interest in the proceeding: (i) The Department or any component of the Department; (ii) Any Departmental employee acting in his or her official capacity; (iii) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or (iv) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and (b) The Department deems the disclosure to be: (i) Relevant and necessary to the proceedings; and (ii) Compatible with the purpose for which we compiled the information; (3) The appropriate Federal, State, tribal, local, or foreign governmental agency that is responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, order, or license, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, order, or license; (4) A congressional office in response to an inquiry to that office by the individual to whom the records pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in manual form in file folders.

RETRIEVABILITY:

Indexed by name of individual landowner.

SAFEGUARDS:

In accordance with the requirements of 43 CFR 2.51 for manual records.

RETENTION AND DISPOSAL:

In accordance with approved retention and disposal schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Realty Officers in the Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

NOTIFICATION PROCEDURE:

Written inquiries regarding the existence of record(s) should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Same as Notification above. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

Written petitions for amendment should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual landowners.

INTERIOR/WBR–40

SYSTEM NAME:

Water Sales and Delivery Contracts.

SYSTEM LOCATION:

Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who purchase excess water, water from unassigned reservoir space for irrigation or domestic use.

CATEGORIES OF RECORDS IN THE SYSTEM:

Requests for water, contracts for individuals to receive water, and pertinent correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) The Reclamation Act of June 17, 1902, (Ch. 1093, 32 Stat. 388), as amended, and acts supplementary thereto, particularly the Reclamation Project Act of August 4, 1939, (Ch. 418, 53 Stat. 1187); (2) Reclamation Extension Act of August 13, 1914; (3) The Omnibus Adjustment Act of May 25, 1926; (4) Section 2 of the Rivers and Harbors Act of August 26, 1937, (Ch. 832, 50 Stat. 844); (5) Reclamation Project Act of 1939; and (6) Flood Control Act of 1944, section 8.

PURPOSE(S):

The primary uses of the records are (a) administration and negotiation of water sales contracts with individual landowner; and (b) to sell water from Corps of Engineers dam and reservoir project.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures outside the Department of the Interior may be made to: (1) State of California Water Resources Control Board for settlement of water rights; (2) Another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains; (3) The Department of Justice, or to a court, adjudicative, or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when: (a) One of the following is a party to the proceeding or has an interest in the proceeding: (i) The Department or any component of the Department; (ii) Any Departmental employee acting in his or her official capacity; (iii) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or (iv) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and (b) The Department deems the disclosure to be: (i) Relevant and necessary to the proceedings; and (ii) Compatible with the purpose for which we compiled the information; (4) The appropriate Federal, State, tribal, local, or foreign governmental agency that is responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, order, or license, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, order, or license; (5) A congressional office in response to an inquiry to that office by the individual to whom the records pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Complete file maintained in manual form in file folders.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

In accordance with the requirements of 43 CFR 2.51 for manual records.

RETENTION AND DISPOSAL:

In accordance with approved retention and disposal schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Realty Officers in the Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

NOTIFICATION PROCEDURE:

Written inquiries regarding the existence of record(s) should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Same as Notification above. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

Written petitions for amendment should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual on whom record is maintained.

INTERIOR/WBR–41

SYSTEM NAME:

Permits.

SYSTEM LOCATION:

Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individual who permits Bureau of Reclamation employees to enter on his land, and (2) Individual with permits to enter Bureau of Reclamation land or facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Written permission to enter private lands or Bureau of Reclamation lands and facilities; permission to erect and maintain structures.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) The Reclamation Act of June 17, 1902, as amended, and supplemental laws, 43 U.S.C. 371, *et seq.*

PURPOSE(S):

(1) To allow Bureau of Reclamation employees to perform required work on private lands; (2) To allow individuals to erect and maintain structures on Reclamation facilities or land; and (3) Land status information, proof of permit, and legal applications.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures outside the Department of the Interior may be made to: (1) Another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains; (2) The Department of Justice, or to a court, adjudicative, or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when: (a) One of the following is a party to the proceeding or has an interest in the proceeding: (i) The Department or any component of the Department; (ii) Any Departmental employee acting in his or her official capacity; (iii) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or (iv) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and (b) The Department deems the disclosure to be: (i) Relevant and necessary to the proceedings; and (ii) Compatible with the purpose for which we compiled the information; (3) The appropriate Federal, State, tribal, local, or foreign governmental agency that is responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, order, or license, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, order, or license; (4) A congressional office in response to an inquiry to that office by the individual to whom the records pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Complete file maintained in manual form in file folders.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

In accordance with the requirements of 43 CFR 2.51 for manual records.

RETENTION AND DISPOSAL:

In accordance with approved retention and disposal schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Realty Officers in the Commissioner's Office, Reclamation Service Center, and Regional Offices: Pacific Northwest, Mid-Pacific, Lower Colorado, Upper Colorado, and Great Plains. See appendix for addresses.

NOTIFICATION PROCEDURE:

Written inquiries regarding the existence of record(s) should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Same as Notification above. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

Written petitions for amendment should be sent to the System Manager at the appropriate address listed in the appendix. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual on whom record is maintained and county recorders.

[FR Doc. 99–14007 Filed 6–2–99; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–244 (Review)]

Natural Bristle Paint Brushes From China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty order on natural bristle paint brushes from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on January 4, 1999 (64 FR 374) and determined on April 8, 1999, that it would conduct an expedited review (64 FR 19197, April 19, 1999).

The Commission is scheduled to transmit its determination in this investigation to the Secretary of Commerce on June 3, 1999. The views of the Commission will be contained in USITC Publication 3199 (June 1999), entitled *Natural Bristle Paint Brushes From China: Investigation No. 731–TA–244 (Review).*

Issued: May 25, 1999.

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–14084 Filed 6–2–99; 8:45 am]

BILLING CODE 7020–02–U

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 332–350 and 332–351]

Monitoring of U.S. Imports of Tomatoes and Monitoring of U.S. Imports of Peppers

AGENCY: United States International Trade Commission

ACTION: Publication of monitoring reports in 1999.

EFFECTIVE DATE: May 25 , 1999.

FOR FURTHER INFORMATION CONTACT: For general information, Timothy McCarty (202–205-3324) or Lowell Grant (202–205–3312), Agricultural and Forest Products Division, Office of Industries, or for information on legal aspects, William Gearhart (202–205–3091), Office of the General Counsel, U.S. International Trade Commission. Hearing impaired persons can obtain information on these studies by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its internet server (http://www.ustic. gov).

BACKGROUND: Section 316 of the North American Free-Trade Agreement Implementation Act (NAFTA Implementation Act), 19 U.S.C. 3381, directs the Commission to monitor imports of fresh or chilled tomatoes (HTS heading 0702.00) and fresh or chilled peppers, other than chili peppers (HTS subheading 0709.60.00) until January 1, 2009. As a result of such monitoring, the domestic industry producing a like or directly competitive perishable agricultural product may request, in a global safeguard petition filed under section 202 of the Trade Act of 1974 or a bilateral safeguard petition filed under section 302 of the NAFTA Implementation Act, that provisional relief be provided pending completion of a full section 202 or 302 investigation. If provisional relief is requested, the Commission has 21 days in which to make its decision and to transmit any provisional relief recommendation to the President. In response to the monitoring directive, the Commission instituted investigation No. 332–350, Monitoring of U.S. Imports of Tomatoes (59 FR 1763) and investigation No. 332–351, Monitoring of U.S. Imports of Peppers (59 FR 1762).

Although section 316 of the NAFTA Implementation Act does not require the Commission to publish reports on the results of its monitoring activities, the Commission has published statistical reports in those years in which it was not conducting an investigation under other statutory authority with respect to such products.

WRITTEN SUBMISSIONS: The Commission does not plan to hold a public hearing in connection with preparation of the 1999 statistical reports. However, interested persons are invited to submit written statements concerning the matters to be addressed in the reports. Commercial or financial information which a submitter desires the Commission to treat as confidential must be provided on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested persons. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission in accordance with § 201.8 of the Commission's rules at the earliest practical date and should be received no later than the close of business on June 30, 1999. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436.

The Commission plans to publish both monitoring reports in September 1999.

Issued: May 26, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–14085 Filed 6–2–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with 28 CFR 50.7 and section 122 of the Comprehensive Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9622, the Department of Justice gives notice that a proposed consent decree in *United States* v. *Bestfoods f/k/a CPC International Inc.*, and *Jennifer Granholm, Attorney General of the State of Michigan* v. *Bestfoods f/k/a CPC International Inc.*, Civil Nos. 1:96CV680 and 1:96CV898 (W.D. Mich.), was lodged with United States District Court for the Western District of Michigan on May 17, 1999, pertaining to the Duell and Gardner Landfill Site (''Site''), located in Muskegon Township, Muskegon County, Michigan. The proposed consent decree would resolve the United States' and the State of Michigan's civil claims against Bestfoods in those cost recovery actions brought under CERCLA and part 201 of the [Michigan] Natural Resources and Environmental Protection Act, 1994 P.A., as amended, MCL 324.20126(a)(1)(a); MSA 13A.20126(a)(1)(a).

Under the proposed consent decree, Bestfoods will pay $50,000 towards the governments' past costs (of which the U.S. will receive $40,000 and Michigan will receive $10,000). In addition, Bestfoods will agree not to seek reimbursement of the costs incurred by Bestfoods in complying with an Order issued by the United States Environmental Protection Agency under CERCLA Section 106, 42 U.S.C. 9606, which ordered Bestfoods to design and implement a remedy for the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree.

Comments pertaining to the proposed consent decree should refer to *United States* v. *Bestfoods f/k/a CPC International Inc.*, Civil No. 1:96CV680 (W.D. Mich.) and DOJ Reference No. 90–11–2–1033.

The proposed consent decree may be examine at: (1) The Office of the United States Attorney for the Western District of Michigan, 330 Ionia, NW., Grand Rapids, Michigan 49503 (616) 456–2404; (2) the United States Environmental Protection Agency (Region 5), 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact Thomas Turner (312–886–6613)); and (3) the U.S. Department of Justice, Environment and Natural Resources Division Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005 (202–624–0892). A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC. 20005. In requesting a copy, please refer to the referenced case and DOJ Reference Number and enclose a check in the amount of $7.75 for the consent decree only (31 pages at 25 cents per page reproduction costs), or $9.25 for the consent decree and its appendices (37 pages), made payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–13994 Filed 6–2–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Lodging of Censent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on April 12, 1999, a proposed consent decree in *United States* v. *Browning-Ferris Industries of Illinois, Inc.*, Civil Action No. C99–0533R, was lodged with the United States District Court for the Western District of Washington. Under the consent decree defendant Browning-Ferris Industries of Illinois, Inc. will pay $471,732 in reimbursement of costs incurred by the United States in response to releases of hazardous substances at the Tulalip Landfill Superfund Site near Marysville, Washington.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Browning-Ferris Industries of Illinois, Inc.*, DOJ Ref. #90–11–3–1412/4.

The proposed consent decree may be examined at the office of the United States Attorney, Western District of Washington, 3600 Seafirst Fifth Avenue Plaza, 800 Fifth Avenue, Seattle, Washington 98104; the Region 10 Office of the U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 2005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy please refer to the referenced case and enclose a check in the amount of $7.50 for the judgment alone, or $131.75 for the Decree and

appendix. Make the check payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–13993 Filed 6–2–99; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Lodging of Partial Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on April 5, 1999, a proposed Partial Consent Decree in *United States* v. *Michael P. Eason, et al.*, Civil Action Number 98–2859 G V, was lodged with the United States District Court for the Western District of Tennessee.

In this action the United States seeks to recover past response costs incurred by the United States at the Memphis Container Site (aka Tri-State Drum Site) (''the Site''), located at 1761 Warford Road, Memphis, Shelby County, Tennessee. The Partial Consent Decree resolves certain claims pursuant to section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607, against defendants Buckman Laboratories, Inc. (''Buckman''), Perma-Fix of Memphis, Inc. (''Perma-Fix''), Croda Inks, Corporation (''Croda Inks''), IBC Manufacturing Company (''IBC''), and Memphis Light, Gas & Water Division (''Memphis Light''). Under the proposed Partial Consent Decree, defendants Buckman, Perma-Fix, Croda Inks, IBC, and Memphis Light will collectively pay $600,000 to the United States for past response costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Partial Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Michael P. Eason, et. al.*, D.J. Ref. 90–11–2–1352.

The Partial Consent Decree may be examined at the Office of the United States Attorney, Western District of Tennessee, Suite 800, 167 North Main Street, Memphis, Tennessee 38103, at U.S. EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303, and at the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $6.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–14033 Filed 6–2–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Lodging of a Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended

Notice is hereby given that on May 3, 1999, a proposed consent decree in *United States* v. *Johnnie Williams, et al.*, Civil Action No. 98–2704 MI BRE, was lodged with the United States District Court for the Western District of Tennessee.

In this action, the United States sought reimbursement of response costs under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9607(a). The costs were incurred with respect to the W & R Drum site in Memphis, Tennessee. W & R Drum used the site between 1982 or 1983 and 1994 to recondition drums that originally contained printing inks, paints, solvents, and other hazardous substances. W & R Drum's operations left behind contaminated soil and approximately 27,000 drums. Under the proposed settlement, forty defendants who allegedly sent hazardous substances to the site have agreed to pay a total of $941,000 to settle United States' civil claims against them.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Johnnie Williams, et al.*, Civil Action No. 98–2704 MI BRE, D.J. Ref. 90–11–2–1351.

The consent decree may be examined at the Office of the Untied States Attorney, 167 North Main Street, Suite 800, Memphis, Tennessee 38103; at U.S. EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia 30303; and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $18.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–13995 Filed 6–2–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Membership of the 1999 Senior Executive Service Performance Review Boards

AGENCY: Department of Justice.

ACTION: Notice of Department of Justice's 1999 Senior Executive Service Performance Review Boards.

SUMMARY: Pursuant to the requirements of 5 U.S.C. 4314 (c)(4), the Department of Justice announces the membership of its Senior Executive Service (SES) Performance Review Boards (PRBs). The purpose of the PRBs is to provide fair and impartial review of SES performance appraisals and bonus recommendations. The PRBs will make recommendations to the Deputy Attorney General regarding the final performance ratings to be assigned and SES bonuses to be awarded.

FOR FURTHER INFORMATION CONTACT: Joanne W. Simms, Director, Personnel Staff, Justice Management Division, Department of Justice, Washington, DC 20530; (202) 514–6788.

Department of Justice, 1999 Senior Executive Service Performance Review Board Members

Antitrust Division

Rebecca P. Dick, Deputy Director of Operations

Nancy M. Goodman, Chief, computers and Finance Section

James M. Griffin, Senior Litigator

Robert A. Potter, Chief, Legal Policy Section

Civil Division

Gary W. Allen, Director, Aviation and Admiralty Litigation, Torts Branch

Vincent M. Garvey, Deputy Director, Federal Programs Branch

Mark B. Stern, Appellate Litigation Counsel, Appellate Staff

Kenneth L. Zwick, Director, Office of Management Programs

Civil Rights Division

Merrily A. Friedlander, Chief, Coordination and Review Section
Katherine A. Baldwin, Chief, Employment Section

Criminal Division

Patty M. Stemler, Chief, Appellate Section
Mary E. Warlow, Senior Counsel for National Security Matters

Environment and Natural Resources Division

Joel M. Gross, Chief, Environmental Enforcement Section
Bruce S. Gelber, Deputy Chief, Environmental Enforcement Section
James C. Kilbourne, Chief, Appellate Section
William M. Cohen, Chief, General Litigation Section

Justice Management Division

Benjamin F. Burrell, Director, Facilities and Administrative Services Staff
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Gilbert M. Leigh, Jr., Assistant Director, Management and Planning Staff

Tax Division

Stephen J. Csontos, Senior Legislative Counsel
Joseph E. Young, Executive Officer

Bureau of Prisons

Christopher Erlewine, Assistant Director, Office of General Counsel and Review
Robert J. Newport, Senior Deputy Assistant Director for Administration
Steven B. Schwalb, Assistant Director, Industries, Education and Vocational Training Division
Salvador Seanez, Jr., Assistant Director, Community Corrections and Detention Division
Ronald G. Thompson, Assistant Director, Human Resource Management Division
Phillip P. Wise, Assistant Director, Health Services Division

Immigration and Naturalization Service

Owen B. Cooper, Deputy General Counsel
Michael D. Cronin, Assistant Commissioner for Inspections
Carol A. Hall, Assistant Commissioner for Human Resources and Development
Winona H. Varnon, Director of Security
David A. Yentzer, Assistant Commissioner for Administration
Jeffrey L. Weiss, Director, Asylum Division

United States Marshals Service

Gilbert H. Kleinknecht, Assistant Director for Executive Services

Office of Justice Programs

Cynthia J. Schwimer, Comptroller
Carolyn A. Hightower, Deputy Director, Office of Victims of Crime
Paul F. Kendall, General Counsel

Executive Office of Immigration Review

Jack E. Perkins, Chief Administrative Hearing Officer

Executive Office for United States Attorneys

Frank M. Kalder, Deputy Director, Resource Management and Planning

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Jeffrey M. Miller, Associate Director

Valerie M. Willis,

Executive Secretary, Senior Executive Resources Board.

[FR Doc. 99–13996 Filed 6–2–99; 8:45 am]

BILLING CODE 4410–AR–M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of May, 1999.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–35, 942; Rainier West Sportswear, Centralia, WA
TA–W–35, 934; The Torrington Co., Elberton, GA
TA–W–35, 706; Nooter Fabricators, Inc., St. Louis, MO
TA–W–36, 004; Specialty Discharge Lighting and Lighting Resources International, Bellevue, OH
TA–W–36, 015; World Color, Dresden, TN
TA–W–35, 769; Arrow Automotive Industries, Morrilton, AR
TA–W–35, 977; A and M Mfg., Inc., Cosby, MO
TA–W–35, 875; E and H Industrial Supplies, Inc., Williston, ND
TA–W–35, 869; CMS Oil and Gas Co., Traverse City District Office, Traverse City, MI

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–35, 969; Smith Foods, Inc., Independence, KS
TA–W–35, 933; Boise Cascade Corp., Paper Engineering Dept, Boise, ID
TA–W–36, 165; Joe T. Smith, Inc., Hawley, TX
TA–W–35, 748; Boone's Bit Service, Williston, ND
TA–W–35, 785; Fleenor Dirt Construction, Inc., Hays, KS
TA–W–35, 962; Wilson Supply, Houston, TX
TA–W–36, 141; Kentucky Apparel, Glasgow, KY

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–35, 762 & A; LSI Logic, Inc., Fort Collins, Co., & Colorado Springs, CO
TA–W–35, 899; Consolidated Coal Co., Humphrey #7 Mine, Osage, WV
TA–W–35, 627; Titan Tire Corp., Des Moines, IA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–36, 107; Standard Register Co., Fulton, KY

Declines in employment at the subject firm is attributed to a shift in production to other domestic affiliated locations.

TA–W–35, 870; Kay Jay Paints Co., A Calvin Klein Co, A Subsidiary of the Warnaco Group, Inc., Nesquehoning, PA

The investigation revealed that criteria (1) and criteria (2) have not been met. A significant number or proporation of the workers did not

become totally or partially separated from employment as required for certification. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–36,117; Easton Corp., Golf Grip Div., Laurinburg, NC: August 22, 1998.
TA–W–35,775; The Goodyear Tire and Rubber Co., Gadsden, AL: April 24, 1999.
TA–W–36,152; Roffe Accessories, Long Island City, NY: March 30, 1998.
TA–W–35,506; Paramount Headwear, Inc., Winona, MO: December 19, 1997.
TA–W–35,928; Murata Electronics North America, Inc., State College, PA: March 1, 1998.
TA–W–35,806; Phelps Dodge Corp., Chino Mine, Santa Rita, NM: January 25, 1998.
TA–W–35,782; JPS Converte & Industrial Corp, A Subsidiary of JPS Textile, Inc., Rocky Mount, VA: February 22, 1998.
TA–W–36,126; G.L.R. Corp., Williston, ND: March 31, 1998.
TA–W–35,974; Lou Levy & Sons Fashion, Inc., Sample Room, New York, NY: May 1, 1999.
TA–W–35,941; Master Slack Corp., Bolivar, TN: March 16, 1998.
TA–W–35,895; Guilford of Maine, Newport, ME: April 18, 1999.
TA–W–35,605; Ball Foster Glass Container Co., Millville, NJ: January 27, 1998.
TA–W–36,051; Breed Technologies, Inc., dba Breed Technologies Holdings, Maryville, TN: March 30, 1998.
TA–W–36,088; Petroleum Experience, Wiliston, ND: March 29, 1998.
TA–W–35,708; General Electric Industrial Systems, Jonesboro, AR: February 3, 1998.
TA–W–35,670; SGL Carbon Corp., Morganton, NC: February 8, 1998.
TA–W–35,837; Datiani Fashions LTD, New York, NY: February 18, 1998.
TA–W–36,104; Chamberlain Moore-Matic, Waupaca, WI: March 29, 1998.
TA–W–35,590; Petco Petroleum Corp., St. Elmo, IL: January 18, 1998.
TA–W–35,758; ASARCO, Inc., Amarillo, TX: February 5, 1998.
TA–W–35,801; Continental Sprayers, Inc., El Paso, TX: February 24, 1998.
TA–W–35,878; Vingcard, Inc., Dallas, TX: March 3, 1998.
TA–W–35,894; Revelation Bra Co,. dba Goddess Bra, East Boston, MA: March 3, 1998.
TA–W–35,781; Friday Child Manufacturing, Inc., New York, NY: February 3, 1998.
TA–W–35,665; Triple A Trouser Mfg Co., Scranton, PA: January 22, 1998.
TA–W–35,902; General Electric Co., Morrison, IL: March 3, 1998.
TA–W–35,969; Buster Brown Apparel, Inc., Norton, VA: March 16, 1998.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), Subchaper D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issues during the month of May, 1999.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced; by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–03042; CMS Oil & Gas Co., Traverse City District Office, Traverse City, MI
NAFTA–TAA–03001; Charles Komar & Sons, McAlester, OK
NAFTA–TAA–02916; KCS Resources, Inc., dbs Mountain Resources, Inc., Worland, WY
NAFTA–TAA–02989; The Torrington Co., Elberton, GA
NAFTA–TAA–02890; Titan Tire Corp., Des Moines, IA
NAFTA–TAA–03014; Master Slack Corp., Bolivar, TN
NAFTA–TAA–03049; Murata Electrics North America, Inc., State College, PA
NAFTA–TAA–02957; Baker Atlas Div. Of Baker Hughes, Houston, TX
NAFTA–TAA–03055; World Color, Dresden, TN
NAFTA–TAA–03073; Graybec Lime, Inc., Formerly Fellefonte Lime Co., Bellefonte, PA
NAFTA–TAA–03081; Siemens Information Communication Networks, Cherry Hill, NJ
NAFTA–TAA–03035; A and M Mfg., Inc., Cosby, MO
NAFTA–TAA–03131; Cole-Haan Manufacturing, Livermore Falls, ME
NAFTA–TAA–03024; Sanchez Oil and Gas Corp., Laredo, TX
NAFTA–TAA–03012; Controlled Recovery, Inc., Hobbs, NM
NAFTA–TAA–03080; Good Lad Co., Philadelphia, PA

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–03008; Cashman Equipment Co., Elko, NV
NAFTA–TAA–03009; Canyon Construction, Inc., Elko, NV
NAFTA–TAA–02874; Anchor Drilling Fluids USA, Inc., Sidney, MT
NAFTA–TAA–03037; Jencraft Corp., McAllen, TX

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–03167; Oxford Automotive, Oxford Suspension, Inc., Hamilton, IN: April 21, 1998.
NAFTA–TAA–03036; The Stroh Brewery Co., Corp. Headquarters, Detroit, MI: March 12, 1998.
NAFTA–TAA–03130; The Stroh Brewery Co., Winston-Salem Brewery, Winston-Salem, NC: April 22, 1998.
NAFTA–TAA–03071; the Stroh Brewery Co., the Blitz Weinhard Brewing Co., Portland, OR: April 5, 1998.

NAFTA–TAA–03011; The Stroh Brewery Co., Heileman—La Crosse Plant, La Crosse, WI: March 18, 1998.

NAFTA–TAA–03162; The Stroh Brewery Co., The Rainier Brewery Co., Seattle, WA: April 26, 1998.

NAFTA–TAA–03123; The Stroh Brewery Co., Longview Brewery, Longview, TX: April 20, 1998.

NAFTA–TAA–02865; Ball Foster Glass Container Co., Millville, NJ: January 6, 1998.

NAFTA–TAA–03124; Eagle Pitcher Industries, Inc., Construction Equipment Div., Lubbock, TX: April 23, 1998.

NAFTA–TAA–03153; Waterford Irish Stoves, Inc., West Lebanon, NH: April 25, 1998.

NAFTA–TAA–03038; Triple D Services, Inc., Gastonia, NC: March 11, 1998.

NAFTA–TAA–03061; Mark Steel Jewelry, Spring City, UT: March 25, 1998.

NAFTA–TAA–02922; The Goodyear Tire and Rubber Co., Gadsden, AL: April 16, 1999.

NAFTA–TAA–03068; Paris Fashions, Paris, TN: March 29, 1998.

NAFTA–TAA–03142; Gerber Childrenswear, Inc., Ballinger, TX: April 30, 1998.

NAFTA–TAA–03059; International Paper, Printing Papers Div., Hudson River Mill, Corinth, NY: March 16, 1998.

NAFTA–TAA–02991; Exide Electronics, Brunswick Plant Operation, Leland, NC: February 18, 1998.

NAFTA–TAA–03163; Tarkett, Inc., Whitehall, PA: April 29, 1998.

NAFTA–TAA–02968; Russell Corp., Habersham Mills, Habersham Mills, GA: March 1, 1998.

I hereby certify that the aforementioned determinations were issued during the months of May, 1999. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: May 26, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–13966 Filed 6–2–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35, 434A–TA–W–35, 434F]

Baker Atlas a/k/a Western Atlas Inc. a/k/a Wedge Dia-Log Inc., Operating in the Following States; TA–W–35,434A Texas, TA–W–35,434B Louisiana, TA–W–35,434C California, TA–W–35,434D Pennsylvania, TA–W–35,434E Massachusetts, TA–W–35,434F Colorado; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Determination Regarding Eligibility to Apply for Worker Adjustment Assistance on February 24, 1999, applicable to workers of Baker Atlas operating at various locations in Texas, Louisiana, California, Pennsylvania, Massachusetts and Colorado. The notice was published in the **Federal Register** on April 6, 1999 (64 FR 16753).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the exploration and drilling of crude oil. Findings on review show that some of the workers have had their wages reported to Unemployment Insurance tax accounts under Western Atlas Inc. and Wedge Dia-Log Inc. The company official explained that in August 1998, the subject firm merged with Western Atlas Inc. which owned Wedge Dia-Log Inc. The intent of the Department's certification is to include all workers of Baker Atlas. Accordingly, the Department is amending the worker certification to reflect this matter.

The amended notice applicable to TA–W–35,434A–F is hereby issued as follows:

All workers of Baker Atlas, also known as Western Atlas Inc. and also known as Wedge Dia-Log Inc. in field locations in Texas (TA–W–35,434A), Louisiana (TA–W–35,434B), California (TA–W–35,434C), Pennsylvania (TA–W–35,434D), Massachusetts (TA–W–35,434E), and Colorado (TA–W–35,434F) who became totally or partially separated from employment on or after November 30, 1997 through February 24, 2001, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC., this 24th day of May 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–13967 Filed 6–2–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35, 434]

Baker Atlas, Headquartered in Houston, TX; Negative Determination Regarding Application for Reconsideration

By application bearing the postmark date April 14, 1999, the petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Baker Atlas, headquartered in Houston, Texas, was signed on February 24, 1999, and published in the **Federal Register** on April 6, 1999 (63 FR 16753).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petition was filed on behalf of workers of the subject firm headquarters and oilfield equipment production facility in Houston, Texas. The investigation was expanded to include workers of the subject firm engaged in the exploration and drilling of crude oil in Texas, Louisiana, California, Pennsylvania, Massachusetts and Colorado (TA–W–35, 434A–E). The Baker Atlas workers at the field locations were certified eligible to apply for TAA and are not subject of the application for reconsideration. The investigation applicable to the headquarters and oilfield equipment production workers resulted in a negative determination based on the finding that the workers did not meet the ''contributed importantly'' group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended. The oilfield equipment produced by workers at Baker Atlas in Houston was used exclusively by the subject firm drilling and exploration operations in Texas and five other States. Other findings of the investigation revealed that the United States is a net exporter of oilfield equipment.

The petitioners contend that the Department based its negative TAA determination for headquarters and oilfield equipment production staff on the mistaken premise that the workers could be certified only if the imports of oilfield equipment have contributed importantly to worker separations. The petitioners maintain that since the oilfield equipment produced in Houston is used predominantly by Baker Atlas at its own exploration and drilling sites, increased imports of crude oil did contribute to closing those exploration and drilling sites.

The 1988 Omnibus Trade and Competitiveness Act amendments to the Trade Act of 1974 extended coverage to service workers engaged in exploration and drilling for crude oil and natural gas. Therefore, the workers at the Baker Atlas field locations met the ''contributed importantly'' criterion of the group eligibility requirements of the Trade Act. The same consideration cannot be given to those workers producing oilfield equipment for Baker Atlas in Houston, Texas. U.S. imports of crude oil cannot be considered like or directly competitive with imports of oilfield equipment.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC, this 20th day of May 1999.

Grant D. Beale,

Acting Director Office of Trade Adjustment Assistance.

[FR Doc. 99–13968 Filed 6–2–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,663]

Baker Hughes Inteq a/k/a Baker Hughes Oilfield Operations Headquartered in Houston, TX and Operating at Various Locations in the States of: Alaska, TA–W–35,663A; California, TA–W–35,663B; Colorado, TA–W–35,663C; Louisiana, TA–W–35,663D; Oklahoma, TA–W–35,663E; Texas, TA–W–35,663F; Wyoming, TA–W–35,663G; West Virginia, TA–W–35,663H; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on March 25, 1999, applicable to workers of Baker Hughes Inteq, headquartered in Houston, Texas and operating in the States of Alaska, California, Colorado, Louisiana, Oklahoma, Texas and Wyoming. The notice was published in the **Federal Register** on April 27, 1999 (64 FR 22648). The certification was amended on April 20, 1999, to include workers separated from employment at the subject firm's West Virginia locations. The notice of amendment was published in the **Federal Register** on May 6, 1999, (64 FR 22417).

At the request of a State agency, the Department reviewed the certification for workers of the subject firm. The workers of Baker Hughes Inteq are engaged in employment related to exploration and drilling of crude oil wells for unaffiliated customers. New information provided by the State agency and a company official show that some of the workers at various Baker Hughes Inteq locations have had their wages reported to the Unemployment Insurance (UI) tax account for Baker Hughes Oilfield Operations.

The intent of the Department's certification is to cover all workers of Baker Hughes Inteq who were adversely affected by increased imports of crude oil. Accordingly, the Department is amending the certification to include workers of the subject firm whose wages were reported as Baker Hughes Oilfield Operations.

The amended notice applicable to TA–W–35,663 and TA–W–35,663A–H is hereby issued as follows:

All workers of Baker Hughes Inteq also known as Baker Hughes Oilfield Operations, headquartered in Houston, Texas (TA–W–35,663), and operating at various locations in the States of Alaska (TA–W–35,663A), California (TA–W–35,663B), Colorado (TA–W–35,663C), Louisiana (TA–W–35,663D), Oklahoma (TA–W–35,663F), Texas (TA–W–35,663G) and Wyoming (TA–W–35,663H), who became totally or partially separated from employment on or after February 2, 1998 through March 25, 2001, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 20th day of May 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–13973 Filed 6–2–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,216]

Camp-Hill Corp., McKeesport, Pennsylvania; Affirmative Determination Regarding Application for Reconsideration

By letter of February 8, 1999 the company sole customer requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to petition number TA–W–35,216. The denial notice was signed on January 19, 1999 and was published in the **Federal Register** on January 25, 1999 (64 FR 4711).

The sole customer provided information concerning the ownership of the materials manufactured by the subject firm which requires the Department to conduct a customer survey of the sole customer's customers of electric resistance welded (ERW) carbon and alloy pipe.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC., this 20th day of May 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–13969 Filed 6–2–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34, 783A, Etc.]

TA–W–34, 783A, Clover Trimmings, Inc., Now Known as Tiger Embroidery Works, Inc., New York, New York; TA–W–34, 783C, Clover Trimmings, Inc., Now Known as Tiger Embroidery Works, Inc., West New York, New Jersey; TA–W–34, 783D, Swissloom Embroidery Works, Inc., West New York, New Jersey; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 23, 1998, applicable to workers of Clover Trimmings, Inc., New York, New York. The notice was published in the **Federal Register** on November 10, 1998 (63 FR 63078).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of lace and embroidered trimmings. The company reports that Clover Trimmings, Inc. ''became known as Tiger Embroidery Works, Inc.'' in February, 1998. Information also shows that Swissloom Embroidery Works, Inc., which also produced lace and embroidered trimmings, is a division of Tiger Embroidery Works, Inc. Worker separations occurred at Swissloom Embroidery Works, Inc., West New York, New Jersey when it closed in May, 1999.

Accordingly, the Department is amending the certification determination to correctly identify the new title name to read ''Clover Trimmings, Inc., now known as Tiger Embroidery Works, Inc.'', New York, New York, and West New York, New Jersey, and Swissloom Embroidery Works, Inc.'', West New York, New Jersey.

The intent of the Department's certification is to include all workers of Clover Trimmings, Inc., now known as Tiger Embroidery Works, Inc. who were adversely affected by increased imports.

The amended notice applicable to TA–W–34, 783A is hereby issued as follows:

All workers of Clover Trimmings, Inc., now known as Tiger Embroidery Works, Inc., New York, New York (TA–W–34, 583A), West New York, New Jersey (TA–W–34, 583C) and Swissloom Embroidery Works, West New York, New Jersey (TA–W–34, 783D) who became totally or partially separated from employment on or after July 6, 1997 through October 23, 2000 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 20th day of May, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–13970 Filed 6–2–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,382 and TA–W–35,382A]

Coach Leatherware Corp., TA–W–35,382, Carlstadt, NJ, and TA–W–35,382A, New York, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 8, 1999, applicable to all workers of Coach Leatherware Corp., Carlstadt, New Jersey. The notice was published in the **Federal Register** on May 11, 1999 (64 FR 25372).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in employment related to the production of handbags and accessories. New information provided by the company shows that worker separations occurred at the subject firm's New York, New York facility. The workers are sewing machine operators and packers for Coach's production facility in Carlstadt, New Jersey. Accordingly, the Department is amending the certification to cover workers of Coach Leatherware Corporation, New York, New York.

The intent of the Department's certification is to include all workers of Coach Leatherware Corporation adversely affected by increased imports.

The amended notice applicable to TA–W–35,382 is hereby issued as follows:

All workers of Coach Leatherware Corporation, Carlstadt, New Jersey (TA–W–35,382) and New York, New York (TA–W–35,382A) who became totally or partially separated from employment on or after November 30, 1997 through February 8, 2001 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington DC, this 17th day of May, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–13978 Filed 6–2–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,370]

Mademoiselle Knitwear including Modular Sweater, Inc., Brooklyn, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 25, 1999, applicable to all workers of Mademoiselle Knitwear, Brooklyn, New York. The notice was published in the **Federal Register** on April 6, 1999 (64 FR 16753).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of men's and women's sweaters. New information shows that worker separations occurred at Modular Sweater, Inc. when it closed in October 1998. The workers provided post knitting operations (washing, cutting, & shipping) to support the production of men's and women's sweaters at Mademoiselle Knitwear, Brooklyn, New York. The workers of Modular Sweater, Inc. were inadvertently omitted from the certification.

Accordingly, the Department is amending the certification to cover the workers of Modular Sweater, Inc., Brooklyn, New York.

The intent of the Department's certification is to include all workers of Mademoiselle Knitwear adversely affect by increased imports.

The amended notice applicable to TA–W–35,370 is hereby issued as follows:

All workers of Mademoiselle Knitwear and Modular Sweater, Inc., Brooklyn, New York who became totally or partially separated from employment on or after December 8, 1997 through February 25, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 10th day of May, 1999.

Grand D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–13976 Filed 6–2–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,666]

Mayflower Manufacturing Co., Old Forge, PA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Notice of Certification Regarding Eligibility to apply for Worker Adjustment Assistance on May 3, 1999, applicable to workers of Mayflower Manufacturing Company located in Old Forge, Pennsylvania. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of men's and boy's slacks. Findings show that the Department incorrectly set the worker certification impact date at January 1, 1998. The impact date should be January 22, 1998, one year prior to the date of the petition. Accordingly, the Department is amending the certification to reflect this matter.

The amended notice applicable to TA–W–35,666 is hereby issued as follows:

All workers of Mayflower Manufacturing Company, Old Forge, Pennsylvania who became totally or partially separated from employment on or after January 22, 1998 through May 3, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 17th day of May, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–13975 Filed 6–2–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,135]

Modular Sweater, Inc., Brooklyn, NY; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on May 10, 1999 in response to a worker petition which was filed on behalf of workers at the Modular Sweater, Inc., Brooklyn, New York.

An active certification covering the petitioning group of workers is already in effect (TA–W–35,370). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C., this 10th day of May, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance, Office of Trade Adjustment Assistance.

[FR Doc. 99–13977 Filed 6–2–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–34,538, etc.]

TA–W–34,538, OXY USA, Inc., Logan, KS; and Andrews, TX, TA–W–34,538V; Carthage, TX, TA–W–34,538W' Longview, TX, TA–W–34,538X; Levelland, TX, TA–W–34,538Y; Midland, TX, TA–W–34,538Z; Odessa, TX, TA–W–34,538AA; Welch, TX, TA–W–34,538AB; Hobbs, NM, TA–W–34,538AC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 8, 1998, applicable to workers of OXY USA, Inc., Logan, Kansas. The notice was published in the **Federal Register** on July 31, 1998 (63 FR 40935).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations occurred at OXY USA, Inc. operating at the various locations cited above. The workers are engaged in the production of crude oil and natural gas.

The intent of the Department's certification is to include all workers of OXY USA, Inc. adversely affected by increased imports. Accordingly, the Department is amending the certification to cover workers of OXY USA, Inc. operating at the various locations cited below.

The amended notice applicable to TA–W–34,538 is hereby issued as follows:

All workers of OXY USA, Inc., Logan Kansas (TA–W–34,538), Andrews, Texas (TA–W–34,538V), Carthage, Texas (TA–W–34,538W), Longview, Texas (TA–W–34,538X), Levelland, Texas (TA–W–34,538Y), Midland, Texas (TA–W–34,538Z), Odessa, Texas (TA–W–34,538AA), Welch, Texas (TA–W–34,538AB) and Hobbs, New Mexico (TA–W–34,538AC) who became totally or partially separated from employment on or after April 29, 1997 through July 8, 2000 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 17th day of May, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–13979 Filed 6–2–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,336]

Washington Veneer (Formerly Known as Omak Wood Products), Omak, WA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 11, 1998, applicable to workers of Omak Wood Products, Omak, Washington. The notice was published in the **Federal Register** on December 23, 1998. (63 FR 71165).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the manufacture of plywood. The company reports that in July, 1998 Omak Wood Products, Omak, Washington was purchased by Washington Veneer.

Accordingly, the Debarment is amending the certification determination to correctly identify the new title name to read ''Washington Veneer''. (formerly known as Omak Wood Products),

The amended notice applicable to TA–W–35,336 is hereby issued as follows:

All workers of Washington Veneer, (formerly known as Omak Wood Products), Omak, Washington (TA–W–35,336) engaged in employment related to the production of plywood who became totally or partially separated from employment on or after November 30, 1997 through January 14, 2000 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 17th day of May, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–13974 Filed 6–2–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,000 and TA–W–35,077C]

TA–W–35,077, William Carter Co. Centreville, MI; TA–W–35,077C, Senatobia, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 18, 1998, applicable to all workers of William Carter Company, Centreville, Mississippi. The notice was published in the **Federal Register** on December 16, 1998 (63 FR 69313).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations will occur at William Carter's Senatobia, Mississippi facility when it closes in June, 1999. The workers are engaged in the production of infants' basic and designer apparel and children's playwear.

Accordingly, the Department is amending the certification to cover workers at William Carter Company, Senatobia, Mississippi.

The intent of the Department's certification is to include all workers of William Carter Company adversely affected by increased imports.

The amended notice applicable to TA–W–35,077 is hereby issued as follows:

All workers of William Carter Company, Centreville, Mississippi (TA–W–35,077) and, Senatobia, Mississippi (TA–W–35,077C) who became totally or partially separated from employment on or after September 22, 1997 through November 18, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington DC, this 10th day of May, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–13971 Filed 6–2–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,198]

William Carter Co., Senatobia, Mississippi; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 10, 1999 in response to a worker petition which was filed on behalf of workers at William Carter Company, Senatobia, Mississippi.

An active certification covering the petitioning group of workers is already in effect (TA–W–35,077C). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC., this 10th day of May, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–13972 Filed 6–2–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H–1B Visas in Specialty Occupations and as Fashion Models

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95), 44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension to the collection of information on the Labor Condition Application for H–1B nonimmigrants. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before August 2, 1999.

ADDRESSES: Comments and questions regarding the collection of information on Form ETA 9035, Labor Condition Application for H–1B Nonimmigrants, should be directed to James Norris, Chief, Division of Foreign Labor Certifications, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–4456, Washington, DC 20210 ((202) 219–5263 (this is not a toll-free number)).

SUPPLEMENTARY INFORMATION:

I. Background

The Immigration and Naturalization Act (INA) requires that before any alien may be admitted or otherwise provided status as an H–1B nonimmigrant, the prospective employer must have filed with the Department a labor condition application stating that they will offer prevailing wages and working conditions, that there is not a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment, and that they have provided notice of such filing to the bargaining representative or, if there is none, by posting notice of filing in conspicuous locations at the place of employment. Further, the employer must make certain documentation available for public examination. Complaints may be filed with the Department alleging a violation of the labor condition application process. If reasonable cause is found to believe a violation has been committed, the Department will conduct an investigation and, if appropriate, assess penalties. The INA places a limit on the number of aliens who can be admitted to the U.S. on H–1B visas (115,000 in FY '99, 107,500 in FY '00, and 65,000 in FY '01). The INA further limits these workers to a maximum of six years duration of stay under H–1B status.

The INA requires that the Department make available for public examination in Washington, DC, a list of employers which have filed labor condition applications.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collections techniques or other forms of information, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

On January 5, 1999, the Department published a Notice of Proposed Rulemaking (NPRM) and a request for comments in the **Federal Register** (64 FR 628). The purpose of the NPRM was to implement statutory changes in the H–1B visa program made to the INA by the American Competitiveness and Workforce Improvement Act of 1998. The Department is currently in the process of reviewing comments received in response to the NPRM and preparing a final rule to implement the statutory changes, including changes to the Form ETA 9035. The Department will be requesting OMB approval of the changes to the information collection request at the time that rule is published. However, since the current OMB approval for the Form ETA 9035 expires June 30, 1999, there is a need for an extension of the existing collection of information pertaining to employers' seeking to use H–1B nonimmigrants in specialty occupations or as fashion models of distinguished merit and ability. This action is necessary in order for the Department to meet its statutory responsibilities under the INA.

Type of Review: Extension of a currently approved collection without change.

Agency: Employment and Training Administration, Labor.

Title: Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H–1B Visas in Specialty Occupations and as Fashion Models.

OMB Number: 1205–0310.

Affected Public: Businesses or other for-profit; not-for-profit institutions; Federal government; State, Local or Tribal government.

Form: Form ETA 9035.

Total Respondents: 250,000.

Frequency of Response: On occasion.

Total Responses: 250,050.

Average Burden Hours Per Response: 1.25.

Estimated Total Annual Burden Hours: 250,050.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Signed at Washington, DC, this 27 day of May, 1999.

John R. Beverly III,

Director, Employment Service.

[FR Doc. 99–14071 Filed 6–2–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D09708, et al.]

Proposed Exemptions; RREEF America L.L.C. (RREEF)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW, Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

RREEF America L.L.C. (RREEF), Located in San Francisco, California

[Application No. D–9708]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990.)

Part I—Exemption for Payment of Certain Fees to RREEF

The restrictions of sections 406(b)(1) and (b)(2) of the Act and the taxes imposed by section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply, effective as of (i) May 16, 1994, with respect to a single client, separate account established on behalf of the Shell Pension Trust (the Shell Account), and (ii) the date the final exemption is published in the **Federal Register**, with respect to any single client, separate account (Single Client Account) or any multiple client account (Multiple Client Account) formed on, or after, such a date, to the payment of certain initial investment fees (the Investment Fee), annual management fees based upon net operating income (the Asset Management Fee), and performance fees (the Performance Fee) to RREEF by employee benefit plans for which RREEF provides investment management services (the Client Plans) [1] pursuant to an investment management agreement (the Agreement) entered into between RREEF and the Client Plans either individually, through an establishment (or amendment) of a Single Client Account, or collectively as participants in a newly established Multiple Client Account (collectively, the Accounts), provided that the conditions set forth below in Part III are satisfied.

Part II—Exemption for Investments in a Multiple Client Account

The restrictions of section 406(a)(1)(A) through (D) of the Act and the taxes imposed by section 4975(c)(1)(A) through (D) of the Code, shall not apply to any investment by a Client Plan in a Multiple Client Account managed by RREEF formed on, or after, the date the final exemption is published in the **Federal Register**, provided that the conditions set forth below in Part III are satisfied.

Part III—General Conditions

(a)(1) The investment of plan assets in a Single or Multiple Client Account, including the terms and payment of any Investment Fee, Asset Management Fee and Performance Fee (collectively; the Fees), shall be approved in writing by a fiduciary of a Client Plan which is independent of RREEF and its affiliates (the Independent Fiduciary).

(2) For purposes of the Fees, the fair market value of the Accounts' real property assets (other than in the case of actual sales) will be based on appraisals prepared by independent qualified appraisers that are Members of the Appraisal Institute (MAI Appraisers). In this regard, every agreement by which an appraiser is retained will include the appraiser's representation that: (1) Its ultimate client is the Account and its underlying Client Plan (and non-Plan) investors, and (2) it will perform its duties in the interest of such Account (and investors). In addition, following the date this proposed exemption is granted, every agreement shall advise the appraiser that it owes a professional obligation to the Account when making an appraisal for properties held by the Account.

(b) The terms of any investment in an Account and of the Fees, shall be at least as favorable to the Client Plans as those obtainable in arm's-length transactions between unrelated parties.

(c) At the time any Account is established (or amended) and at the time of any subsequent investment of assets (including the reinvestment of assets) in such Account:

(1) Each Client Plan in a Single Client Account shall have total net assets with a value in excess of $100 million, and each Client Plan that is an investor in a Multiple Client Account shall have total net assets with a value in excess of $50 million; and provided that seventy-five percent (75%) or more of the units of beneficial interests in a Multiple Client Account are held by Client Plans or other investors having total assets of at least $100 million. In addition, 50 percent (50%) or more of the Client Plans investing in a Multiple Client Account shall have assets of at least $100 million. A group of Client Plans maintained by a single employer or controlled group of employers, any of which individually has assets of less than $100 million, will be counted as a single Client Plan if the decision to invest in the Account (or the decision to make investments in the Account available as an option for an individually directed account) is made by a fiduciary other than RREEF, who exercises such discretion with respect to Client Plan assets in excess of $100 million.

(2) No Client Plan shall invest, in the aggregate, more than 5% of its total assets in any Account or more than 10% of its total assets in all Accounts established by RREEF.

(d) Prior to making an investment in any Account (or amending an existing Account), the Independent Fiduciary of each Client Plan investing in an Account shall have received offering materials from RREEF which disclose all material facts concerning the purpose, structure, and operation of the Account, including any Fee arrangements (provided that, in the case of an amendment to the Fee arrangements, such materials need address only the amended fees and any other material change to the Account's original offering materials).

(e) With respect to its ongoing participation in an Account, each Client Plan shall receive the following written information from RREEF:

(1) Audited financial statements of the Account prepared by independent public accountants selected by RREEF no later than 90 days after the end of the fiscal year of the Account;

(2) Quarterly and annual reports prepared by RREEF relating to the overall financial position and operating results of the Account and, in the case of a Multiple Client Account, the value of each Client Plan's interest in the Account. Each such report shall include a statement regarding the amount of fees paid to RREEF during the period covered by such report;

(3) Periodic appraisals (as agreed upon with the Client Plans) indicating the fair market value of the Account's assets as established by an MAI appraiser independent of RREEF and its affiliates. In the case of any appraisal that will serve as the basis for any ''deemed sale'' of such property for purposes of calculating the Performance Fee payable to RREEF (as discussed in paragraph (j) below), then:

(i) In the case of any Single Client Account, such MAI appraiser shall be either (A) Selected by the Independent Fiduciary of the Client Plan subject to the affirmative approval of RREEF, or (B) selected by RREEF subject to approval by the Independent Fiduciary of the Client Plan;

(ii) In the case of any Multiple Client Account, such MAI appraiser shall be approved in advance by the Responsible Independent Fiduciaries (as defined in Part IV(e) below) owning a majority of the interests in the Accounts, determined according to the latest

[1] The Client Plans (including employee benefit plans that may become Client Plans in the future) consist of various pension plans as defined in section 3(2) of the Act and other plans as defined in section 4975(e)(1) of the Code with respect to which RREEF serves as a trustee or an investment manager.

valuation of the Account's assets performed no more than 12 months prior to such appraisal, which approval may be by written notice and deemed consent by such Fiduciaries' failure to object to the appraiser within 30 days of such notice; and

(iii) In either case, the selected MAI appraiser shall acknowledge in writing that the Client Plan(s) and other investors (in the case of a Multiple Client Account), rather than RREEF, is (are) its clients, and that in performing its services for the Account it shall act in the sole interest of such Client Plan(s) and other investors. In addition, following the date this proposed exemption is granted, every appraiser selected shall acknowledge that it owes a professional obligation to the Client Plan(s) and other investors in the Account in performing its services as an appraiser for properties in the Account. If an MAI appraiser selected by RREEF, or an appraisal performed by a previously approved appraiser, is rejected by the Independent Fiduciary for a Single Client Account or the Responsible Independent Fiduciaries for the Multiple Client Account, determined according to the latest valuation of the Account's assets performed no more than 12 months prior to such appraisal, the fair market value of the assets for any ''deemed sale'', relating to the payment of a Performance Fee (as described in paragraphs (i) and (j) below) shall be determined as follows: (A) the Client Plans shall appoint a second appraiser and, if the value established for the property does not deviate by more than 10% (or such lesser amount as may be agreed upon between RREEF and the Client Plan(s)), then the two appraisals shall be averaged; (B) if the values differ by more than 10%, then the two appraisers shall select a third appraiser, that is independent of RREEF and its affiliates, who will attempt to mediate the difference; (C) if the third appraiser can cause the first two to reach an agreement on a value, that figure shall be used; however, (D) if no agreement can be reached, the third appraiser shall determine the value based on procedures set out in the governing agreements of the Account or, if no such procedures are established, shall conduct its own appraisal and the two closest of the three shall be averaged;

(4) In the case of any Multiple Client Account, a list of all other investors in the Account;

(5) Annual operating and capital budgets with respect to the Account, to be distributed to a Client Plan within 60 days prior to the beginning of the fiscal year to which such budgets relate; and

(6) An explanation of any material deviation from the budgets previously provided to such Client Plan for the prior year.

(f) The total fees paid to RREEF shall constitute no more than ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(g) The Investment Fee shall be equal to a specified percentage of the net value of the Client Plan assets allocated to the Account which shall be payable either:

(1) At the time assets are deposited (or deemed deposited in the case of reinvestment of assets) in the Account; or

(2) In periodic installments, the amount (as a percentage of the aggregate Investment Fee) and timing of which have been specified in advance based on the percentage of the Client Plan's assets invested in real property as of the payment date; provided that (i) The installment period is no less than three months, and (ii) if the percentage of the Client Plan assets which have actually been invested by a payment date is less than the percentage required for the aggregate Investment Fee to be paid in full through that date (both determined on a cumulative basis), the Investment Fee paid on such a date shall be reduced by the amount necessary to cause the percentage of the aggregate Investment Fee paid to equal only the percentage of the Client Plan assets actually invested by that date. The unpaid portion of such Investment Fee shall be deferred to and payable on a cumulative basis on the next scheduled payment date (subject to the percentage limitation described in the preceding sentence).

(h) The Asset Management Fee shall be payable for each quarter from the net operating income (NOI) of the Account. The amount of the Asset Management Fee, expressed as a percentage of the NOI of the Account, shall be established by the Agreement and agreed to by the Independent Fiduciaries of the Client Plans:

(1) The Asset Management Fee for any Account will be calculated as follows. The Asset Management Fee for a specific Account real property will be based solely on items of operating income and expense that are identified as line items on an operating budget for such property disclosed to each Client Plan that participates in the Account. The disclosures have to be made at least 30 days in advance of the fiscal year to which the budget relates, and approved in the manner described in (2) below;

(2) Each Client Plan must provide affirmative approval of the operating budget. Specifically, when the proposed budget (or any material deviation therefrom) is sent to a Client Plan, it will be accompanied by a written notice that the Client Plan may object to the budget or any specific line item therein, for purposes of calculating the Asset Management Fees for the next fiscal year. The written notice will contain a statement that affirmative approval of the budget is required prior to the end of the 30-day period following such disclosure. In the case of a Multiple Client Account, affirmative approval by a majority of investors (by interest) will constitute approval of the proposed budget (or deviation); and

(3) In the event of any subsequent decrease in previously approved budgeted operating expenses for the fiscal year in excess of the limits previously described (15% for any line item, 5% overall), then the resulting increase in NOI (i.e., over and above the allowable deviation) will not be taken into account in calculating RREEF's management fee unless affirmative approval for the payment of such fee is obtained in writing from the Independent Fiduciary for the Client Plan in the Single Client Account or the Responsible Independent Fiduciaries for the Multiple Client Account.

(i) In the case of any Multiple Client Account, the Performance Fee shall be payable after the Client Plan has received distributions from the Account in excess of an amount equal to 100% of its invested capital plus a pre-specified annual compounded cumulative rate of return (the Threshold Amount or Hurdle Rate). However, in the case of RREEF's removal or resignation, RREEF shall be entitled to receive a Performance Fee payable either at the time of removal or, in the event of RREEF's resignation, upon sale of the assets to which the Performance Fee is allocable or upon termination of the Account as the case may be, subject to the requirements of paragraph (l) below, as determined by a deemed distribution of the assets of the Account based on an assumed sale of such assets at their fair market value (in accordance with independent appraisals), only to the extent that the Client Plan would receive distributions from the Account in excess of an amount equal to the Threshold Amount at the time of RREEF's removal or resignation. Both the Threshold Amount and the amount of the Performance Fee, expressed as a percentage of the net proceeds from a capital event distributed (or deemed distributed) from the Account in excess of the Threshold Amount, shall be established by the Agreement and agreed to by the Independent Fiduciaries of the Client Plans.

(j) In the case of any Single Client Account, the Performance Fee shall be determined and paid either: (1) In the same manner as in the case of a Multiple Client Account, as described in paragraph (i) above; or (2) at the end of any pre-specified period of not less than one year, provided that such Fee is based upon the sum of all actual distributions from the Account during such period, plus deemed distributions of the assets of the Account based on an assumed sale of all such assets at their fair market value as of the end of such period (in accordance with independent appraisals performed within 12 months of the calculation) which are calculated to be in excess of the Threshold Amount or the Hurdle Rate through the end of such period. For this purpose, the Performance Fee measuring period shall be established by the Agreement and agreed to by the Independent Fiduciary of the Client Plan, provided that such period is not less than one year. In addition, RREEF shall provide notice to the Client Plan within 60 days of each Performance Fee calculation for a Single Client Account that the Independent Fiduciary of the Client Plan has the right to request updated appraisals of the properties held by the Account if such Fiduciary determines that the existing independent appraisals (performed within 12 months of the calculation) are no longer sufficient.

(k) The Threshold Amount for any Performance Fee shall include at least a minimum rate of return to the Client Plan, as defined below in Part IV, paragraph (f).

(l) In the event RREEF resigns as investment manager for an Account, the Performance Fee shall be calculated at the time of resignation as described above in paragraph (i) above and allocated among each property, based on the appraised value of such property in relationship to the total appraised value of the Account. Each amount arrived at through this calculation shall be multiplied by a fraction, the numerator of which will be the actual sales price received by the Account on subsequent disposition of the property (or in the case of a property which has not been sold prior to the termination of a Multiple Client Account, the appraised value of the property as of the termination date), and the denominator of which will be the appraised value of the property which was used in connection with determining the Performance Fee at the time of resignation, provided that this fraction shall never exceed 1.0. The resulting amount for each property shall be the Performance Fee payable to RREEF upon the sale of such property or termination of the Multiple Client Account, as the case may be.

(m) In cases where RREEF does have discretion to reinvest proceeds from capital events, the reinvested amount shall not be treated as a new contribution of capital by the Client Plan for purposes of the Investment Fee, as described above in paragraph (g), or having been distributed for purposes of the payment of Performance Fee as described above in paragraphs (i) and (j);

(n) RREEF or its affiliates shall maintain, for a period of six years, the records necessary to enable the persons described in paragraph (o) of this Part III to determine whether the conditions of this exemption have been met, except that:

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of RREEF or its affiliates, the records are lost or destroyed prior to the end of the six year period; and (2) no party in interest, other than RREEF, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (o) below.

(o)(1) Except as provided in paragraph (o)(2) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (n) of this Part III shall be unconditionally available at their customary location for examination during normal business hours by:

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(ii) Any fiduciary of a Client Plan or any duly authorized employee or representative of such fiduciary;

(iii) Any contributing employer to a Client Plan or any duly authorized employee or representative of such employer; and

(iv) Any participant or beneficiary of a Client Plan or any duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described above in paragraph (o)(1)(ii)–(iv) shall be authorized to examine the trade secrets of RREEF and its affiliates or any commercial or financial information which is privileged or confidential.

(p) RREEF shall provide a copy of the proposed exemption and a copy of the final exemption to all Client Plans that invest in any Single Client Account or any Multiple Client Account formed on, or after, the date the final exemption is published in the **Federal Register**.

Part IV—Definitions

(a) An ''affiliate'' of a person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative of, or partner of any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term ''management services'' means:

(1) Development of an investment strategy for the Account and identification of suitable real estate-related investments;

(2) Directing the investments of the assets of the Account, including the determination of the structure of each investment, the negotiation of its terms and conditions and the performance of all requisite due diligence;

(3) Determination of the timing of, and directing, the disposition of assets of the Account and directing the liquidation of the Account upon termination;

(4) Administration of the overall operation of the investments of the Account, including all applicable leasing, management, financing and capital improvement decisions;

(5) Establishing and maintaining accounting records of the Account and distributing reports to Client Plans as described in Part III; and

(6) Selecting and directing all service providers of ancillary services as defined in this Part IV; provided, however, that some or all of the foregoing management services may be subject to the final discretion of the Independent Fiduciary(ies) for the Client Plan(s).

(d) The term ''ancillary services'' means:

(1) Legal services;

(2) Services of architects, designers, engineers, construction managers, hazardous materials consultants, contractors, leasing agents, real estate brokers, and others in connection with the acquisition, construction, improvement, management and disposition of investments in real property;

(3) Insurance brokerage and consultation services;

(4) Services of independent auditors and accountants in connection with auditing the books and records of the Accounts and preparing tax returns;

(5) Appraisal and mortgage brokerage services; and

(6) Services for the development of income-producing real property.

(e) The term ''Independent Fiduciary'' with respect to any Client Plan means a fiduciary (including an in-house fiduciary) independent of RREEF and its affiliates. With respect to a Multiple Client Account, the terms ''Independent Fiduciary'' or ''Responsible Independent Fiduciaries'' mean the Independent Fiduciaries of the Client Plans invested in the Account and other authorized persons acting for investors in the Account which are not employee benefit plans as defined under section 3(3) of ERISA (such as governmental plans, university endowment funds, etc.) that are independent of RREEF and its affiliates, and that collectively hold more than 50% of the interests in the Account.

(f) The terms ''Threshold Amount'' or ''Hurdle Rate'' mean, with respect to any Performance Fee, an amount which equals all of a Client Plan's capital invested in an Account plus a pre-specified annual compounded cumulative rate of return that is at least a minimum rate of return determined as follows:

(1) A ''floating'' or non-fixed rate which is at least equal to the lesser of seven percent, or the rate of change in the consumer price index (CPI), during the period from the deposit of the Client Plan's assets into the Account until the determination date; or

(2) A fixed rate which is at least equal to the lesser of seven percent or the average rate of change in the CPI over some period of time specified in the Agreement, which shall not exceed 10 years.

(g) The terms ''Net Operating Income'' or ''NOI'' means all operating income of the Account (i.e., rents, interest, and other income from day-to-day investment activities of the Account) less operating expenses, determined on an accrual basis in accordance with generally accepted accounting principles, but without regard to depreciation (or other non-cash) expense and capital expenditures and without regard to payments of interest and principal with respect to any acquisition indebtedness relating to the property.

(h) The term ''Net Proceeds of a Capital Event'' means all proceeds from capital events of an Account (i.e., sales or non-recourse refinances of real property investments owned by the Account) less repayment of debt with respect to such property, closing expenses paid, and reasonable reserves established in connection therewith, whether such reserves are for repayment of existing or anticipated obligations or for contingent liabilities.

EFFECTIVE DATE: This proposed exemption, if granted, will be effective as of (i) May 16, 1994, with respect to the Shell Account, and (ii) the date the final exemption is published in the **Federal Register**, with respect to any Single Client Account and any Multiple Client Account formed on, or after, such date.

Summary of Facts and Representations

1. RREEF America L.L.C. and its affiliate, RREEF Management Company, provide investment and property management services to institutional investors, including employee benefit plans and other tax-exempt entities, through various separate accounts and commingled accounts.

On January 27, 1998, RREEF America L.L.C. and its affiliate, RREEF Corporation (collectively, RREEF), were acquired by RoProperty Services, B.V. (RoProperty), a major Dutch investment advisory firm. As a result, the RREEF entities were combined into a newly created Delaware limited liability company which continues to use the name ''RREEF America L.L.C.'' RREEF operates as an autonomous entity which continues to provide investment management services, and its affiliate, RREEF Management Company, continues to provide property management services.

2. RREEF is generally appointed as an investment manager (the Manager) as defined in section 3(38) of the Act with respect to each Client Plan that invests in a Single Client Account or a Multiple Client Account. Although RREEF has discretion with respect to the day-to-day operation of each Account and, in many cases, RREEF has full discretion over Account acquisition and/or disposition decisions, in certain cases final investment authority may remain with the Client Plans.

3. A Client Plan may enter into one or more separate account relationships with RREEF (each, a Single Client Account) pursuant to one or more individually negotiated investment management agreements with RREEF, or by investing in a commingled investment fund (Multiple Client Account, collectively; the Accounts) managed by RREEF.[2] The Accounts to date have been blind investment relationships established for the purpose of identifying and acquiring real property investments that meet certain investment criteria. However, specified-property investment relationships may be established to invest in pre-identified real property investments. The responsibilities of RREEF in a typical blind discretionary Account would include:

(a) Development of an investment strategy for the Account and identification of suitable real estate investments.

(b) Directing the investment of the assets of the Account, including the determination of the structure of each investment, the negotiation of its terms and conditions, and the performance of requisite due diligence.

(c) Determining the timing of, and directing, the disposition of assets of the Account and directing the liquidation of the Account upon termination.

(d) Administering the overall operation of the investments of the Account, including all applicable leasing, management, financing, and capital improvement decisions.

(e) Establishing and maintaining accounting records of the Account, and distributing reports to Client Plans.

(f) RREEF also has complete discretion in the selection and direction of the ancillary services (Ancillary Services) defined in Part IV, paragraph (d) above.[3]

RREEF's primary investment objective is to acquire income-producing real property which will generate current return through cash distributions and will offer a potential for profit through gain on resale.

Currently, Multiple Client Accounts consist primarily of tax-exempt group trusts organized pursuant to IRS Revenue Ruling 81–100 and limited partnerships. However, other Multiple Client Accounts may be organized in the

[2] The applicant represents that in some instances a Client Plan's investment in a Multiple Client Account that is a common or collective trust fund maintained by a bank would be exempt from the restrictions of section 406(a) of the Act by reason of section 408(b)(8). The Department expresses no opinion herein whether all the conditions of section 408(b)(8) will be satisfied in such transactions.

[3] RREEF or its affiliates may, from time-to-time, provide certain Ancillary Services to the Accounts, such as in connection with the development or redevelopment of real property, preparation of tax returns, environmental consulting, or other services. Occasionally, RREEF has provided construction management and development services with respect to non-ERISA governmental plan accounts. However, upon special request from a client, RREEF may agree to provide ancillary services, such as construction management or development services based upon its knowledge of the Client Plan's investments and its particular expertise. It represented that the Ancillary Services are provided in accordance with section 408(b)(2) and the regulations thereunder (see 29 CFR 2550.408b–2). However, the Department expresses no opinion as to whether the selection of RREEF to provide Ancillary Services or the payment of fees for such Ancillary Services, as described herein, would meet the conditions of section 408(b)(2) of the Act.

future, including, but not limited to, title-holding corporations, real estate investment trusts, or limited liability corporations. In the case of Multiple Client Accounts that are group trusts, individual principals and officers of RREEF generally serve as trustees thereof. Similarly, RREEF principals and officers may serve as directors and/or officers of other vehicles. RREEF currently does not serve as general partner with respect to any of its limited partnership accounts that are subject to ERISA. Typically, the general partner is a corporation owned by one or more of the limited partners. However, in each case, the primary investment discretion is delegated to RREEF pursuant to an investment management agreement between RREEF and the Account (the Agreement).

4. RREEF proposes to have the Client Plans pay for investment management services it renders to the Accounts based upon a multi-fee structure which will be approved in advance by the Independent Fiduciaries of the Client Plans.[4] Each Client Plan in a Single Client Account shall have total net assets with a value in excess of $100 million, and each Client Plan that is an investor in a Multiple Client Account shall have total net assets with a value in excess of $50 million. In addition, seventy-five percent (75%) or more of the units of beneficial interests in a Multiple Client Account must be held by Client Plans or other investors having total assets of at least $100 million, and 50 percent (50%) or more of the Client Plans investing in a Multiple Client Account must have assets of at least $100 million. A group of Client Plans maintained by a single employer or controlled group of employers, any of which individually has assets of less than $100 million, will be counted as a single Client Plan if the decision to invest in the Account (or the decision to make investments in the Account available as an option for an individually directed account) is made by a fiduciary other than RREEF, who exercises such discretion with respect to Client Plan assets in excess of $100 million. No Client Plan shall invest, in the aggregate, more than 5% of its total assets in any Account or more than 10% of its total assets in all Accounts established by RREEF.

The relief provided by this proposed exemption for the multi-fee structures described herein will apply prospectively to any newly formed Multiple Client Account, if such arrangement is approved in advance by the appropriate Independent Fiduciaries of the Client Plans and other investors that invest in the Account. In addition, the relief provided by this proposed exemption will apply retroactively to the Shell Pension Trust for its existing Single Client Account (i.e., the Shell Account), as of May 16, 1994, and prospectively for other Single Client Accounts if the conditions of the exemption are met. Therefore, with regard to any Account, the Independent Fiduciary(ies) of the Client Plan(s) will have final approval as to whether the Agreement between the Client Plan(s) and RREEF will provide for any Investment Fees, Asset Management Fees, or Performance Fees. Similarly, in the case of any Account, the final decision to invest the assets of any Client Plan in such Account will be made by an Independent Fiduciary. RREEF will not exercise its discretion with respect to any Single Client Account to invest those assets in any Multiple Client Account. With respect to the Shell Account, RREEF represents that this Single Client Account has complied with all the applicable conditions contained herein for, among other things, approval by an Independent Fiduciary for investment in such an Account, the payment of any Fees to RREEF, the retention of any appraiser (as discussed further below) for the valuation of properties held in the Account,[5] and the minimum plan asset size required for participation in such Accounts.[6]

5. The multi-fee structure will include: (i) The Investment Fee, a one-time initial fee paid either at the time the Client Plan invests in, or allocates additional assets to, the Account, or in periodic installments while such assets are invested by the Account, as described below; (ii) the Asset Management Fee, an annual fee for asset management charged as a percentage of the net operating income produced by properties held in the Account (defined below), which will be payable to RREEF without regard to the return to the Client Plans of their invested capital; and (iii) the Performance Fee, a fee charged upon actual or deemed distributions of capital proceeds from the Account in excess of a Client Plan's invested capital, plus a negotiated cumulative, compounded annual hurdle rate of return on such invested capital (i.e., the Threshold Amount or Hurdle Rate). In a Single Client Account, an Independent Fiduciary may agree to allow RREEF to receive a periodic Performance Fee based on the Account's performance prior to the Client Plan receiving actual distribution of capital back from the Account in amounts which exceed the prescribed Threshold Amounts. Such Fees will be based on deemed distributions of the assets in such Accounts at periodic intervals, with all property valuations determined by qualified real estate appraisers independent of RREEF and its affiliates. Any property valuation used in the calculation of the Performance Fee will be performed within 12 months of that calculation.

6. RREEF requests an individual exemption for Client Plans that invest in an Account to pay an Investment Fee, Asset Management Fee, and a Performance Fee to RREEF under circumstances described below. RREEF represents that Fee rates and Threshold Amounts will be negotiated on an Account-by-Account basis.

The Investment Fee will be a one-time fee intended to cover the expense of organizing the Account, identifying suitable investments, and completing the initial purchases of real properties for the Account, based on the assets invested by the Client Plan in the Account. The Investment Fee may be paid either (i) At the time the Client

[4] Section 404 of the Act requires, among other things, that a plan fiduciary act prudently and solely in the interest of the plan's participants and beneficiaries. Thus, the Department expects a plan fiduciary, prior to entering into any performance based compensation arrangement with an investment manager, to fully understand the risks and benefits associated with a compensation formula following disclosure by the investment manager of all relevant information pertaining to the proposed arrangement. In addition, a plan fiduciary must be capable of periodically monitoring the actions taken by the investment manager in the performance of its duties. The plan fiduciary must consider prior to entering into any such arrangement, whether it is able to provide adequate oversight of the investment manager during the course of the arrangement.

[5] RREEF's Quarterly Report for the Shell Account, dated December 31, 1998, describes a portfolio consisting of the following six properties: (1) the Bellaire Place Apartments, a residential property located in Redmond, Washington, with a fair market value of approximately $18.6 million; (2) the San Diego Business Center, an industrial property located in San Diego, California, with a fair market value of approximately $17.7 million; (3) the West Sacramento Industrial Center, an industrial property located in Sacramento, California, which was sold on December 23, 1998 for $6.4 million; (4) the Broadway Business Park, an industrial property located in Phoenix, Arizona, with a fair market value of $26.5 million; (5) 1627 K Street, N.W., an office building located in Washington, D.C., with a fair market value of approximately $9.4 million; and (6) Wendemere at the Ranch Apartments, a residential property located in Westminster, Colorado, with a fair market value of approximately $16 million. The fair market value of the properties still held in the Shell Account, as of December 31, 1998, was approximately $88,268,000.

[6] The Shell Pension Trust contained approximately $5.7 billion in total assets, of which approximately 2% were invested in real estate, as of January, 1999. These real estate assets are managed by three primary investment managers, one of which is RREEF.

Plan invests assets in the Account, or (ii) in installments at the end of pre-specified periods of not less than three months (over a specified period of years). However, if the pre-specified percentage of the Account's assets has not been invested by the payment date for the Investment Fee, the amount of such fee payable on that date will be reduced to reflect the percentage of assets which have been invested by that date. In such instances, the remainder of the Investment Fee will be deferred until the next pre-specified installment date. At that time, the Investment Fee for the current and past installment dates will be paid (subject to further deferral if the relevant assets in the Account have not been invested at that time). The Investment Fees will generally range from 0% to 2% of the capital committed for investment by the Client Plans. However, the exact percentage for any Investment Fee will be negotiated between RREEF and the relevant Client Plans in the Account.

7. The Asset Management Fee will be paid quarterly throughout the term of the Account. As with the Investment Fee, the exact terms of the Asset Management Fee will be negotiated between RREEF and the Client Plan(s) prior to the initial investment of any Client Plan(s)' assets in the Account. The Asset Management Fee will be calculated with respect to the net operating income (NOI) from properties owned by the Account. In this regard, NOI will not include gains made on properties from capital events. The Asset Management Fee will be paid without regard to the return of the Client Plan's invested capital.

The Asset Management Fee will compensate the Investment Manager for the following services: (i) Selection of properties and other assets for acquisition or disposition in an Account, (ii) day-to-day investment and administrative operations of an Account, (iii) performance of property management and leasing services for the properties held by the Account, (iv) obtaining and maintaining insurance for the properties and other assets in the Account, (v) establishing tax-exempt title-holding corporations under section 501(a) of the Code for the properties, (vi) obtaining independent MAI appraisals of the properties every three years, and performing annual internal valuations of the properties, as necessary; and (vii) preparing quarterly and annual written reports concerning assets, receipts, and disbursements of the Account.

As stated above, the Asset Management Fee will be charged as a percentage of the NOI on the properties held by the Account for each quarter. The Asset Management Fees are determined by negotiation for each Account, but generally will be between 5% to 8% of the NOI per quarterly payment period for properties in the Account. NOI for an Account will be determined on the basis of recurring operating (non-capital) income (i.e., rents, interest, and other income from the day-to-day investments of the Account) less recurring operating expenses (i.e., utilities, taxes, insurance and maintenance) determined on an accrual basis in accordance with generally accepted accounting principles. RREEF states that these recurring revenue items and operating expenses will be set forth in annual budgets that are reviewed and approved in advance by the Client Plans and other investors.

The NOI for an Account will be determined without regard to capital expenditures and non-cash expenditures for the Account, such as depreciation on properties held by the Account or amortization of capital expenditures. In addition, NOI will not be reduced by debt service. Therefore, capital items, such as debt service and non-cash expense items, will have no effect on RREEF's Asset Management Fees. Instead, as discussed more fully below, these items will be reflected in the Performance Fee because any capital expenditure will increase the Threshold Amount for purposes of any subsequent Performance Fee calculation, and any capital distribution will reduce the Threshold Amount.[7]

With respect to each Account, RREEF will prepare annual operating and capital budgets for each of the Account's properties, which will be distributed to each Client Plan invested in the Account, within 60 days prior to the beginning of the fiscal year to which such budgets apply. At the end of each year, RREEF will also distribute to each Client Plan an explanation of any material deviation from the budgets previously provided to the Client Plan for such year.

8. RREEF agrees that in calculating its Asset Management Fee for any Account, the Fee for any individual real property in the Account will be determined solely on the basis of those items of operating income and expense that are identified as line items in the operating budget for such property, which shall be disclosed to each Client Plan that participates in the Account. Such disclosures have to be made at least 30 days in advance of the fiscal year to which the budget relates, and approved by the Client Plans in the manner described below.

If, during such year for any previously disclosed line item of operating expense in the budget for a property, there is any material deviation between such line item and the actual amount of such expense for the current year, such deviation will not be taken into account in calculating the Asset Management Fee unless it is first disclosed to, and approved by, the Client Plan(s) in the same manner as the original budgeted line item. For this purpose, a determination of what is considered a ''material'' deviation will be established by the investment or property management agreement between RREEF and the Client Plan(s) for any real property held by the Account. Property management agreements used by RREEF permit no more than a 15% variance between any individual line item expense in the operating budget from year to year. In addition, overall budgeted expenses may vary no more than 5% from year to year.

If the requisite percentage of investors in an Account fails to approve the proposed budget or any line item therein, then RREEF will continue to utilize the prior year's budget figures (generally with a permitted deviation of 5%). In the event of any subsequent material deviation from a line item expense in a previously approved budget, or the addition of a new line item, RREEF would use the expense figures as budgeted for purposes of its fee calculation, and the variance would have no effect on its current Asset Management Fee calculation, unless a revised budget reflecting the deviation (or new line item) is approved. Any such variance would be reflected only in the subsequent Performance Fee calculation (by increasing or decreasing the Threshold Amount).[8]

The Client Plan approval for these purposes will be by an affirmative approval in advance by the Independent Fiduciary of a Single Client Account or

[7] As noted above, the determinations of which items are ''operating'' and which are ''capital'' will be determined by generally accepted accounting principles. Such determinations are subject to annual review and confirmation by independent Certified Public Accountants retained to audit RREEF's annual financial statements.

[8] For example, if RREEF were to budget landscaping expenses at $100 for an Account, but the actual figure turns out to be $80, unless RREEF obtains the approval of its Client Plans, the amount it uses for calculating its Asset Management Fee would be limited to $85 (applying the 15% deviation, as described above). Although the additional $5 cost savings directly benefits the Client Plans, it would not be reflected in the Asset Management Fee. Rather, to the extent that this cost savings increases the amount available for distribution to the Client Plans, it would be reflected in the Threshold Amount for purposes of calculating RREEF's future Performance Fee.

the Responsible Independent Fiduciaries for a Multiple Client Account representing at least a majority of the interests in such Account.[9] Specifically, when the proposed budget (or any material deviation therefrom) is sent to a Client Plan, it will be accompanied by a written notice that the Client Plan must approve the budget, and any specific line item therein, for purposes of calculating the Asset Management Fees for the next fiscal year. The written notice will contain a statement that affirmative approval of the current budget is required prior to the end of the 30-day period following such disclosure. In the case of a Multiple Client Account, affirmative approval by a majority of investors (by interest) will constitute approval of the proposed budget (or deviation). In the event of any subsequent decrease in previously approved budgeted operating expenses for the fiscal year in excess of the limits previously described (15% for any line item, 5% overall), then the resulting increase in NOI (i.e., over and above the allowable deviation) will not be taken into account in calculating RREEF's management fee unless affirmative approval for the payment of such fee is obtained in writing from Independent Fiduciary for the Client Plan in the Single Client Account or the Responsible Independent Fiduciaries for the Client Plans and other investors in the Multiple Client Account.

With respect to the Shell Account, RREEF represents that annual budgets have been presented to an Independent Fiduciary for the Shell Pension Trust for review and approval each year since May 16, 1994. In this regard, RREEF states that although the annual budget approvals for properties held in the Shell Account may not have been in writing in all cases, both parties (i.e., RREEF and the Independent Fiduciary for the Shell Account) have made contemporaneous written confirmations of their discussions regarding the annual budgets.

9. The applicant states that in lieu of the Investment Fee and/or the Asset Management Fee, RREEF and the Client Plans may agree to an alternative fee arrangement for an Account (the Alternative Fee) which is based either upon a fixed amount or amounts, or an objective formula to be negotiated (in either case) between RREEF and the Client Plan prior to the initial investment of any Client Plan assets in an Account. RREEF represents that any Alternative Fee will be covered by section 408(b)(2) and the regulations thereunder (29 CFR 2550.408b–2). Accordingly, no exemption is being requested by RREEF for any Alternative Fees.

10. In a Single Client Account, the Performance Fee will be determined and paid either (i) In the same manner as in the case of a Multiple Client Account, or (ii) at the end of any pre-specified period of not less than one-year, provided that the Fee is based upon the sum of all actual distributions from the Account during such period, plus deemed distributions of the assets of the Account based on an assumed sale of all such assets at their fair market value as of the end of such period (in accordance with independent appraisals performed within 12 months of the calculation) which are calculated to be in excess of the Threshold Amount through the end of such period.

In the case of a Multiple Client Account, the Performance Fee will be charged against all distributions of net proceeds from capital events, as defined in Part IV(h), only after the Client Plans and other investors have received distributions (from all sources) from the Account in excess of the Threshold Amount agreed to by the Responsible Independent Fiduciaries.

Most of RREEF's Single Client Accounts are long-term open-ended relationships under which the Client Plans may continue to invest new funds on an ongoing basis. For this reason, RREEF states that certain Client Plans that invest in Single Client Accounts will negotiate for the payment of a Performance Fee that would be calculated and payable periodically, not less frequently than once a year (generally, every three years, commencing on the third anniversary of the first acquisitions of properties made by the Account). As noted above, this periodic Performance Fee would be based on all actual sales of properties by the Account and distributions made back to the investors during such period, as well as deemed or constructive sales of all properties held in the Account at their most recent appraised values, and the deemed distributions of the net proceeds from such constructive sales plus earnings which are considered to be at or above the Threshold Amount.[10] In such instances, the periodic Performance Fee will take into account both realized and unrealized net gains on properties held in a Single Client Account, and would be payable to RREEF for deemed distributions of unrealized net gains on properties held by the Account for a pre-specified period. Therefore, if agreed to by the Independent Fiduciary for the Client Plan, RREEF would earn a Performance Fee based on the Single Client Account's performance which occurs prior to a return to the Client Plan of its invested capital plus earnings at or above the designated Threshold Amount or Hurdle Rate.

11. For purposes of the Fees, the fair market value of the Accounts' real property assets (other than in the case of actual sales) will be based on appraisals prepared by independent MAI appraisers. In this regard, every agreement by which an appraiser is retained will include the appraiser's representation that: (1) Its ultimate client is the Account and its underlying Plan (and non-Plan) investors, and (2) it will perform its duties in the interest of such Account (and investors). The applicant states that in the case of any appraisal that will serve as the basis for any ''deemed sale'' of such property for purposes of calculating the periodic Performance Fee payable to RREEF, then the following procedure shall be utilized:

(a) In the case of any Single Client Account, such MAI appraiser shall be either (i) Selected by the Independent Fiduciary of the Client Plan subject to the approval of RREEF, or (ii) selected by RREEF subject to the affirmative approval by the Independent Fiduciary of the Client Plan;

(b) In the case of any Multiple Client Account, such MAI appraiser shall be approved in advance by the Responsible Independent Fiduciaries (as defined in Part IV(e) above) owning a majority of the interests in the Account according to the latest valuation of the Account's assets performed no more than 12 months prior to such appraisal, which

[9] In this regard, the Department notes that an Independent Fiduciary for a Single Client Account should closely scrutinize budget estimates for both the NOI of the Account and the Asset Management Fees payable to RREEF each year based on the actual NOI. With respect to a Multiple Client Account, the Responsible Independent Fiduciaries should collectively scrutinize such budgets and NOI-based Fees, and raise appropriate objections to those Fees which result from actual operating expenses that materially deviate from previously approved budgets for such expenses. Thus, the Department emphasizes that an Independent Fiduciary for a Client Plan investing in either a Single or Multiple Client Account must adequately monitor the payment of any Asset Management Fees to RREEF by closely reviewing how the NOI that results from each property held by the Account may be affected by any actions taken by RREEF for such property.

[10] In this regard, RREEF represents that while it anticipates that most Client Plans establishing a Single Client Account will elect to pay a periodic Performance Fee based on deemed distributions, RREEF will not preclude any such Client Plan from paying a Performance Fee only after the Client Plan has received actual distributions from an Account equal to its initial invested capital plus earnings at the Threshold Amount. However, a periodic Performance Fee arrangement will not be available for Multiple Client Accounts.

approval may be by written notice and deemed consent by such Fiduciaries' failure to object to the appraiser within 30 days of such notice; and

(c) In either case, the selected MAI appraiser shall acknowledge in writing that the Client Plan(s) and other investors (in the case of a Multiple Client Account), rather than RREEF, is (are) its clients, and that in performing its services for the Account it shall act in the sole interest of such Client Plan(s) and other investors. In addition, following the date this proposed exemption is granted, every appraiser selected shall acknowledge that it owes a professional obligation to the Client Plans and other investors in the Account in performing its services as an appraiser for properties in the Account.

If an MAI appraiser selected by RREEF, or an appraisal performed by a previously approved appraiser, is rejected by the Independent Fiduciary for a Single Client Account or the Responsible Independent Fiduciaries for the Client Plans owning the majority of the interests in the Multiple Client Account according to the latest valuation of the Account's assets performed no more than 12 months prior to such appraisal, the fair market value of the assets for any ''deemed sale'' relating to the payment of a Performance Fee will be determined as follows: (i) The Client Plans shall appoint a second appraiser and, if the value established for the property does not deviate by more than 10% (or such lesser amount as may be agreed upon between RREEF and the Client Plan(s)), then the two appraisals shall be averaged; (ii) if the values differ by more than 10%, then the two appraisers shall select a third appraiser, that is independent of RREEF and its affiliates, who will attempt to mediate the difference; (iii) if the third appraiser can cause the first two to reach an agreement on a value, that figure shall be used; however, (iv) if no agreement can be reached, the third appraiser shall determine the value based on procedures set out in the governing agreements of the Account or, if no such procedures are established, shall conduct its own appraisal and the two closest of the three shall be averaged.

In all cases, the Client Plan will retain the right to challenge any appraiser or appraisal. In the case of a Single Client Account, the frequency and timing of the required appraisals will be determined by the Independent Fiduciary of the Client Plan at the time it enters into an Account relationship with RREEF. However, all Performance Fee calculations will be based on contemporaneous appraisals of properties held by the Account, which will be performed within 12 months of the calculation. Thus, for example, RREEF maintains that a three year appraisal cycle will correspond to a three year periodic Performance Fee measuring period for an Account. In addition, RREEF will provide notice to the Client Plan within 60 days of each Performance Fee calculation for a Single Client Account that the Independent Fiduciary of the Client Plan has the right to request updated appraisals of the properties held by the Account if such Fiduciary determines that the existing independent appraisals (performed within 12 months of the calculation) are no longer sufficient.

12. With respect to the calculation of any Threshold Amount for the payment of a Performance Fee, RREEF states that a bookkeeping account will be maintained for each Client Plan which will show at all times the amount that has to be distributed to satisfy the Threshold Amount. When a certain amount is invested in the Account on a particular date, this bookkeeping account will initially equal the invested amount and will thereafter be increased to reflect the hurdle/threshold rate of return for the Account compounded on an annual basis. Whenever a distribution (from any source) is made from the Account to the Client Plan, the amount of this bookkeeping account will be reduced by the full amount of the distribution. Thereafter, the Threshold Amount will be calculated with respect to and added to this reduced amount. Only when the bookkeeping account is reduced to zero will the Threshold Amount be satisfied. With all Multiple Client Accounts, and those Single Client Accounts that elect to have a Performance Fee paid only after actual distributions are paid from the Account, once the Threshold Amount has been satisfied, the Performance Fee will be payable to RREEF with respect to all further distributions of net proceeds from capital events from the Account. With respect to any Single Client Accounts which elect to pay periodic Performance Fees based upon deemed distributions of the proceeds from an assumed sale of the properties by the Account, any such deemed distribution would reduce the Threshold Amount only for purposes of such Fee payment. Thus, immediately after such calculation, the Threshold Amount would be increased by the full amount of the deemed distribution for purposes of determining any later Performance Fee based on either deemed or actual distributions to the Client Plans.

13. The applicant submitted hypothetical examples of how the Performance Fee would work in a Multiple Client Account and a Single Client Account context.

In the first example, RREEF establishes a Multiple Client Account to which the Client Plans contribute $100 million (Initial Contribution) and agree to pay RREEF a Performance Fee equal to 15% of all amounts distributable from the Account after the investors have received distributions equal to their initial invested capital plus a real (CPI-adjusted) annual Threshold Amount of return of 4%. Assuming that CPI remains constant at 4% annually, the nominal annual Threshold Amount is 8% (the Threshold Amount). The Multiple Client Account acquires two real properties at a cost of $90 million (Property I) and $10 million (Property II, collectively; the Properties). Annual cash flow from operations is 7% of the Initial Contribution of $100 million, or 7% million (Annual Cash Flow).

For a Multiple Client Account, the Threshold Amount is calculated as follows: [11]

	Calculation	Threshold amount (in millions of $)
Year 1	100.00+(.08×100.00) − 7 =	$101.00
Year 2	101.00+(.08×101.00) − 7 =	102.08
Year 3	102.08+(.08×102.08) − 7 =	103.25
Year 4	103.25+(.08×103.25) − 7 =	104.51
Year 5	104.51+(.08×104.51) − 7 =	105.87

[11] This example has been simplified. In reality, distributions would be made periodically throughout the year, reducing the amount on which the hurdle is calculated.

	Calculation	Threshold amount (in millions of $)
Year 6	0	

At the end of year 5, Property I is sold for $110 million, and there is an actual distribution of $110 million. Accordingly, RREEF will receive a Performance Fee of 15% times $110 million less $106 million (i.e., the approximate Threshold Amount at year 5), or $600,000. Numerically, this is as follows: ($110 million − $106 million) × 15% = $600,000. Because the Threshold Amount has been reduced to $0 at year 6, an additional Performance Fee will be payable with respect to any subsequent distribution of cash from a capital event, i.e., any sale or refinancing of the remaining property. Accordingly, if Property II is sold in year 10 for $15 million, RREEF will receive an additional Performance Fee of 15% times $15 million, or $2.25 million. Numerically, as follows: $15 million × 15% = $2.25 million. Therefore, the total Performance Fee received by RREEF in this example is $2,850,000.

In the second example, a large Client Plan establishes a Single Client Account with RREEF to which it contributes $100 million (Initial Contribution), and agrees to pay RREEF a Performance Fee every five years equal to 15% of all amounts distributed or deemed distributed from the Account after the Client Plan has received actual or deemed distributions equal to its invested capital plus a real (CPI-adjusted) annual Threshold Amount of return of 4%. If CPI remains constant at 4% annually, the nominal annual rate is 8% (the Threshold Amount). The Account acquires two real property assets at a cost of $90 million (Property I) and $10 million (Property II). Annual cash flow from operations is 7% of the Initial Contribution of $100 million, or 7% million (Annual Cash Flow).

For a Single Client Account, the Threshold Amount is calculated as follows:

	Calculation	Threshold amount (in millions of $)
Year 1	100.00+(.08 × 100.00) − 7 =	$101.00
Year 2	101.00+(.08 × 101.00) − 7 =	102.08
Year 3	102.08+(.08 × 102.08) − 7 =	103.25
Year 4	103.25+(.08 × 103.25) − 7 =	104.51
Year 5	104.51+(.08 × 104.51) − 7 =	105.87
Year 6	120.00 [12] +(.08 × 120.00) − 7 =	122.60
Year 7	122.60+(.08 × 122.60) − 7 =	125.41
Year 8	125.41+(.08 × 125.41) − 7 =	128.44
Year 9	128.44+(.08 × 128.44) − 7 =	131.72
Year 10	131.72+(.08 × 131.72) − 7 =	135.25

After five years, the Threshold Amount will increase to approximately $106 million. At this time, if the two Properties are appraised for $110 million and $10 million, respectively, the deemed distributions are $120 million. Accordingly, at this time RREEF will receive a Performance Fee of: 15% × ($120 million—$106 million) = $2.1 million.

After the first periodic Performance Fee is paid out, the Threshold Amount is calculated as follows: First, the Threshold Amount is restored by the full amount of the deemed distribution, i.e., to $120 million, for purposes of the next five-year Performance Fee calculation. At the end of 10 years, the Threshold Amount will be approximately $135 million, and no additional Performance Fee will be payable unless the combined appraised value of the two Properties exceeds that amount.

14. All proceeds from capital events of an Account (i.e., sales or refinancings of real property investments owned by the Account) will be first applied to pay expenses of the Account. These expenses will include repayment of debt, payment of closing expenses, and establishment of reasonable reserves in connection with the Account's assets, whether such reserves are for repayment of existing or anticipated obligations or for contingent liabilities, other than the Performance Fee. Such proceeds, net of these expenses and reserves, generally will be the distributable net proceeds of capital events upon which the Performance Fee may be payable.

15. With respect to its Single Client Accounts, RREEF generally does not have discretion to reinvest proceeds from capital events, and any such reinvestment will occur at the direction of the Client Plan's Independent Fiduciary. The amount reinvested will be treated as having been recontributed by the Client Plan for purposes of the Investment Fee and the Performance Fee. Thus, RREEF represents that where capital proceeds are reinvested they will be treated as new invested capital for the purpose of the Threshold Amount and the payment of any future Performance Fee. RREEF also states that where it does not have reinvestment discretion, capital proceeds will be distributed to the Client Plan, unless such Client Plan affirmatively consents to the reinvestment. In cases where RREEF does have discretion to reinvest proceeds from capital events, the reinvested amount would not be treated as a new contribution of capital by the Client Plan for purposes of the Investment Fee, or having been distributed for purposes of the payment of Performance Fee. Therefore, such reinvested amounts will not be considered distributions under the bookkeeping account maintained for the Client Plan for purposes of calculating whether the Threshold Amount has been reached.

16. RREEF may be removed as the investment Manager for an Account at any time (generally upon 30 days notice), without cause, upon delivery of a notice of removal to RREEF by the Client Plan in the case of a Single Client

[12] $120.00 is the amount of deemed distributions.

Account, or by the Client Plans owning at least a majority of the interests in a Multiple Client Account. In addition, a Multiple Client Account may terminate upon failure to appoint a replacement investment manager following the removal or resignation of RREEF. The details and mechanics of the removal or resignation process will vary from Account to Account. In the case of an Account procedure for removal for cause (e.g., breach of contract), removal generally will be immediate. In most cases, however, removal will result from a desire to appoint a replacement manager and RREEF may be asked or required to stay on for a period of time (e.g., up to 120 days) until a replacement is in place. Similarly, if RREEF resigns, it may be asked to stay on until a replacement is appointed.

Upon removal of RREEF as investment Manager, RREEF will be entitled to receive the Performance Fee as if: (a) The assets of an Account had been sold at a price which is then-agreed to by RREEF and the Client Plan (or, with respect to a Multiple Client Account, Client Plans and other investors owning at least a majority of the interests in the Multiple Client Account); and (b) the deemed proceeds from the deemed sale were to be distributed from the Account. If RREEF and the Client Plan(s) cannot agree on a price, then the price shall be determined by an independent MAI appraiser mutually agreed to by RREEF and the Client Plan(s). If RREEF and the Client Plan(s) cannot agree on an appraiser, then the governing documents of the Account will provide for a means of selecting one or more appraisers or for seeking binding arbitration, as discussed more fully in paragraph 11 above.

In addition, RREEF may generally resign as investment Manager with respect to any Account at any time, without cause, by providing written notice to the Client Plan(s) with an interest in the Account. In this event, the Performance Fee will be tentatively calculated in the same manner as if RREEF were removed as investment manager, and allocated among each real property investment of the Account in proportion to the respective differences in their appraised values from their original cost (i.e., deemed unrealized appreciation, if any, for each property). The amount of the Performance Fee tentatively allocated to each property will be multiplied by a fraction, the numerator of which will be the actual sales price of the property received by the Account upon the disposition/sale of the property, and the denominator of which will be the appraised value of the property which was used in connection with determining the Performance Fee at the time of resignation, provided that this fraction will never exceed 1.0 (that is, the Performance Fee may be decreased to reflect any subsequent decline in the value of a property, but not increased to reflect any subsequent increase in value).[13] No Performance Fee will be payable until distributions (deemed or actual) from the Account exceed the Threshold Amount.

The Performance Fee will be calculated with respect to each property held by an Account at the time of resignation. However, the Performance Fee will not be paid for any property until the earlier of: (i) The sale of the property from the Account, or (ii) with respect to a Multiple Client Account, the termination of the Account. The Performance Fee will be paid only after the Client Plans have received their initial invested capital plus earnings at the Threshold Amounts. The replacement investment manager of the Account (unrelated to RREEF) will have discretion as to when the property is sold or when the Account is terminated.

17. A Single Client Account generally may be terminated at any time by the Client Plan upon not more than 30 days written notice to RREEF, by RREEF's resignation, or by expiration of the period of years specified in the investment management agreement governing the Account (unless extended at the request of the Client Plan). In the case of a Single Client Account termination, the assets of the Account may be liquidated for cash or distributed in-kind to the Client Plan.

A Multiple Client Account generally may be terminated upon: (a) The affirmative decision of the Client Plans and other investors owning at least a majority of the interests in the Multiple Client Account, or (b) expiration of the period of years specified in the Account's organizational documents. In addition, a Multiple Client Account may terminate upon failure to appoint a replacement investment manager following the removal or resignation of RREEF. Upon termination of a Multiple Client Account, RREEF is generally obligated to dispose of its assets and distribute net sales proceeds in an orderly fashion.

In the case of the Multiple Client or Single Client Account termination, RREEF's Performance Fee would be calculated in the same manner as discussed above with respect to the removal of RREEF.

18. Each Client Plan will receive throughout the term of the Account the following information:

(a) Quarterly and annual reports prepared by RREEF relating to the overall financial position and operating results of the Account (annual reports are audited by independent certified public accountants as required by the terms of the Account's governing documents), a statement regarding the total amount of fees paid by the Account to RREEF for the period, and, in the case of a Multiple Client Account, the value of the Client Plan's interest in the Account;

(b) An annual statement of the current fair market value of all properties owned by the Account based most recent MAI appraisals of such properties;

(c) In the case of a Multiple Client Account, a list of investors in the Account and, when applicable, a notice of any change thereto; and

(d) Operating and capital budgets for the subsequent year, plus (where applicable) an explanation of any material deviation from the prior year's budgets.

Any fiduciary for the Client Plan, as well as other authorized persons described above in paragraph (o)(1) of Part III, will have access during normal business hours to RREEF's records concerning the Accounts in which such persons have an interest, subject to the condition that each such person agree in writing that the information contained in such records shall be kept confidential except to the extent disclosure is authorized in writing by RREEF or is necessary to preserve or protect the assets of an Account or the interests of the Client Plans. The Department and the Internal Revenue Service will have access to all RREEF records concerning the Accounts. The Client Plan(s) having an interest in an Account will also, upon request, be provided with a report of all compensation paid to RREEF by the Account.

19. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The investment of plan assets in a Single or Multiple Client Account, including the terms and payment of any Investment Fee, Asset Management Fee and Performance Fee, shall be approved in writing by an Independent Fiduciary of a Client Plan which is independent of RREEF and its affiliates.

[13] If a Multiple Client Account is terminated prior to the sale of all the Account's assets (i.e., each Client Plan is distributed an undivided interest in each such asset), each remaining asset in the Account at the time of termination will be treated as having been sold at its then-appraised value.

(b) At the time any Account is established (or amended) and at the time of any subsequent investment of assets (including the reinvestment of assets) in such Account:

(1) Each Client Plan in a Single Client Account shall have total net assets with a value in excess of $100 million, and each Client Plan that is an investor in a Multiple Client Account shall have total net assets with a value in excess of $50 million, subject to certain additional requirements as stated in paragraph (1) of Part III(c) above; and

(2) No Client Plan shall invest, in the aggregate, more than 5% of its total assets in any Account or more than 10% of its total assets in all Accounts established by RREEF.

(d) Prior to making an investment in any Account (or amending an existing Account), the Independent Fiduciary of each Client Plan investing in an Account shall have received offering materials from RREEF which disclose all material facts concerning the purpose, structure, and operation of the Account, including any Fee arrangements (*provided* that, in the case of an amendment to the Fee arrangements, such materials need address only the amended fees and any other material change to the Account's original offering materials).

(e) With respect to its ongoing participation in an Account, each Client Plan shall receive the following written information from RREEF:

(1) Audited financial statements of the Account prepared by independent public accountants selected by RREEF no later than 90 days after the end of the fiscal year of the Account;

(2) Quarterly and annual reports prepared by RREEF relating to the overall financial position and operating results of the Account and, in the case of a Multiple Client Account, the value of each Client Plan's interest in the Account. Each such report shall include a statement regarding the amount of the Fees paid to RREEF during the period covered by such report;

(3) Periodic appraisals (as agreed upon with the Client Plans) indicating the fair market value of the Account's assets as established by an MAI licensed real estate appraiser independent of RREEF and its affiliates, under the procedures described herein;

(4) In the case of any Multiple Client Account, a list of all other investors in the Account;

(5) Annual operating and capital budgets with respect to the Account, to be distributed to a Client Plan within 60 days prior to the beginning of the fiscal year to which such budgets relate; and

(6) An explanation of any material deviation from the budgets previously provided to such Client Plan for the prior year;

(f) The total fees paid to RREEF shall constitute no more than ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(g) RREEF shall provide a copy of the proposed exemption and a copy of the final exemption to all Client Plans that invest in any Single Client Account or any Multiple Client Account formed, on or after, the date the final exemption is published in the **Federal Register**.

Notice to Interested Persons

Those persons who may be interested in the pendency of this exemption include the independent fiduciaries of each Client Plan that maintains a Single Client Account with RREEF. Thus, RREEF will provide notice of the proposed exemption to each such affected Client Plan, by first class mail, within thirty (30) days following the publication of the proposed exemption in the **Federal Register**. The notice will include a copy of the notice of proposed exemption as published in the **Federal Register** and as a supplemental statement, as required, pursuant to 29 CFR 2570.43(b)(2). This supplemental statement will inform such interested persons of their right to comment on the proposed exemption and/or to request a hearing. All written comments and/or requests for a hearing are due within sixty (60) days of the publication of this notice of proposed exemption in the **Federal Register**.

In addition, RREEF shall provide a copy of the proposed exemption and a copy of the final exemption to all Client Plans that invest in any Single Client Account or any Multiple Client Account formed on, or after, the date the final exemption is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Premier Funding Group, Inc. Employees Profit Sharing Plan (the P/S Plan) and the Money Purchase Pension Plan for Employees of Premier Funding Group, Inc. (the M/P Plan, collectively; the Plans), Located in Arlington, Texas

[Application Nos. D–10669 and D–10670]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply as of February 1, 1999, to a lease (the Lease) of certain second-floor space (the Leased Premises) in a building by the Plans to LM Holdings, Inc., a party in interest with respect to the Plans; provided that the following conditions are satisfied:

(a) All terms and conditions of the Lease are at least as favorable to the Plans as those which the Plans could obtain in an arm's-length transaction with an unrelated party;

(b) The fair market rental amount for the Lease has been determined by an independent qualified appraiser;

(c) Each Plan's allocable portion of the fair market value of both the Leased Premises and the building where the Leased Premises are located (the Building) represents no more than 20 percent (20%) of the total assets of each Plan throughout the duration of the Lease;

(d) The interests of the Plans under the Lease are represented by an independent, qualified fiduciary (the Independent Fiduciary);

(e) The fees received by the Independent Fiduciary, combined with any other fees derived from any related parties, will not exceed 1% of that person's annual income for each fiscal year that such person continues to serve in the independent fiduciary capacity with respect to the Lease;

(f) The Independent Fiduciary evaluated the Lease and deemed it to be administratively feasible, protective and in the best interest of the Plans;

(g) The Independent Fiduciary monitors the terms and the conditions of the exemption (if granted) and the Lease throughout its duration, and takes whatever action is necessary to protect the Plans' rights;

(h) At the discretion of the Independent Fiduciary, the Lease can be extended for two additional five-year terms, provided that the Independent Fiduciary requires independent appraisals of the Leased Premises to be performed at the time of each extension of the Lease so as to ensure that LM Holdings continues to pay fair market rent, and such rent is not less that either the initial base rent or the amount paid during the most recent annual term; and

(i) Within 90 days of publication in the **Federal Register** of a notice granting this proposed exemption, LM Holdings files with the Internal Revenue Service (IRS) Form 5330 (Return of Initial Excise

Taxes for Pension and Profit Sharing Plans) and pays all excise taxes applicable under section 4975(a) of the Code that are due by reason of the existence of the Lease as a prohibited transaction prior to February 1, 1999.

EFFECTIVE DATE: This exemption, if granted, will be effective as of February 1, 1999.

Summary of Facts and Representations

1. The Plans are a profit sharing plan and a money purchase plan which were established in February, 1994. As of July 15, 1998, the Plans had two participants, Mr. Michael Leighty and Mr. Patrick McCarty (Mr. Leighty and Mr. McCarty, respectively). Mr. Leighty and Mr. McCarty are also the Plans' trustees. As of December 31, 1997, the P/S Plan and the M/P Plan had $924,350 and $616,234 in total net assets, respectively. Messrs. Leighty and McCarty are the only participants of the Plans, the only trustees of the Plans and the sole employees and shareholders of LM Holdings, Inc. (LM Holdings) and Premier Funding Group, Inc (Premier Funding).

Premier Funding is the sponsor of the Plans. Premier Funding and LM Holdings are both incorporated in the State of Texas and are located in Arlington, Texas. Both corporations are jointly owned on a 50%-50% basis by Messrs. Leighty and McCarty. Premier Funding and LM Holdings are in the business of acquiring financial instruments, real estate and other assets.

2. The Leased Premises and the Building are located at 2400 Garden Park Court, Arlington, Texas. The Building was owned by Ed Thulin (Mr. Thulin), an unrelated third party, until December 16, 1997. LM Holdings had leased approximately 700 square feet in the Building from Mr. Thulin under the terms and conditions of the subject Lease, as originally agreed to by the parties.

However, on December 16, 1997, the Plans purchased the Building from Mr. Thulin, for $210,000. Therefore, as of December 16, 1997, the Lease was between the Plans and LM Holdings, which made the Lease a prohibited transaction under the Act.[14] In this regard, the applicant represents that within 90 days of publication in the **Federal Register** of a notice granting this proposed exemption, LM Holdings will file Form 5330 (Return of Initial Excise Taxes for Pension and Profit Sharing Plans) with the IRS and pay all excise taxes applicable under section 4975(a) of the Code that are due by reason of the existence of the Lease prior to February 1, 1999, the effective date of this exemption.

3. After purchasing the Building, the Plans commissioned an appraisal (the Appraisal) of the Leased Premises by an independent, qualified appraiser (see paragraph 5 below). The Appraisal determined the fair market rental value of the Leased Premises to be approximately $7 per rentable square foot, or $782.25 monthly. The Lease was amended on May 5, 1998, whereby the original terms were modified to reflect the fair market rental amount as determined by the Appraisal.[15]

Furthermore, to comply with the fair market rental amount determined by the Appraisal, LM Holdings has made an additional rental payment of $530 to the Plans. The applicant represents that this amount is equal to the difference between the fair market rental value of the Leased Premises and the actual rent that was paid for the Leased Premises by LM Holdings since the beginning of the Lease. This amount was computed by the applicant's attorney and was based on fair market rental amount set forth in the Appraisal.

4. The applicant is now requesting an individual exemption, effective as of February 1, 1999, which is the date that an independent, qualified fiduciary was appointed to represent the Plans for purposes of the Lease (as discussed further below). The parties to the Lease will be the Plans (doing business as PFGI Realty) and LM Holdings. Under the Lease as it now exists between the parties, the Leased Premises include approximately 1,341 square feet of the total rentable 5,196 square feet in the Building.[16] LM Holdings (i.e., the Tenant) will pay $785 per month during the first year of the Lease. Thereafter, on each annual anniversary of the Lease during the initial term and any subsequent renewal periods (discussed more fully below), the rent will be adjusted by the Independent Fiduciary based on the percent change in the annual Consumer Price Index (CPI) as published in the Wall Street Journal for the previous year. This annual adjustment may not fall below the higher of the base rate of $785 per month or the amount paid on a monthly basis during the most recent annual term.

Under the terms of the Lease, LM Holdings will be responsible for electricity, with all other expenses being paid by the owner of the Building (i.e., the Plans).[17] The initial term of the Lease is scheduled to end on May 5, 2003. At the discretion of the Independent Fiduciary, the Lease can be extended for two additional five year terms. The Independent Fiduciary will require independent appraisals to be performed at the time of each extension of the Lease so as to ensure that LM Holdings continues to pay fair market rent. However, the new rents for the Leased Premises set at the time of any extensions of the Lease will not be less than the rent received by the Plans during the prior leasing period.

Furthermore, the Lease requires that LM Holdings, as the tenant, provide public liability and property damage insurance for its business operations on the Leased Premises in the amount of $500,000. This insurance policy names the Plans as the insured.

5. As stated above, the fair market rent of the Leased Premises was established by the Appraisal dated April 20, 1998. The Appraisal was prepared by Thomas S. Haines, MAI and Wayne Burgdorf, MAI of Hanes, Jorgensen & Burgdorf, Ltd., Diversified Real Estate Services located in Arlington, Texas. The Appraisal relied on eight comparable rentals in the surrounding area to determine the fair market rental value of the Leased Premises. The addendums to the Appraisal (the Addendums), dated May 12, 1998 and May 22, 1998, respectively, state that the fair market rent for the Leased Premises is $7.00/square foot fixed, which equates to $782.25 a month, or $9,387 a year, for a five-year lease.

6. The Lease will be monitored by Gary J. Manny (Mr. Manny), who will serve as the Independent Fiduciary on behalf of the Plans for purposes of the Lease. Mr. Manny was appointed as the Independent Fiduciary on February 1, 1999, and has served in that capacity for the Plans since that date. Mr. Manny represents that he is an attorney who has general knowledge of ERISA, and the regulations thereunder. Mr. Manny also represents that he has acted before in a fiduciary capacity as a executor,

[14] Section 406(a)(1)(A) of the Act prohibits, in pertinent part, a plan fiduciary from causing a plan to engage in a transaction which constitutes a leasing of property between the plan and a party in interest.

[15] However, under the Lease as amended by the parties pursuant to the Appraisal, the Landlord and the Tenant have agreed to round off this number to $785 per month.

[16] There are three other tenants in the Building, who separately lease the remaining rentable space. Thus, the Leased Premises represent approximately 25.8% of the Building's rentable space.

[17] The applicant states that the terms of the Lease are identical to the other current leases in the Building. Furthermore, the applicant maintains that the remaining monthly bills for the Building are gas, water and lawn care. These items are not separately metered and are paid by the owner of the Building. The applicant represents that this is consistent with the comparable buildings analyzed in the Appraisal.

guardian and trustee for various clients. Thus, Mr. Manny states that he has experience in protecting the rights of the parties involved in such transactions. Mr. Manny states that he understands the duties, responsibilities and liabilities of acting in a fiduciary capacity for the Plans.

7. Mr. Manny represents that he is independent of LM Holdings, Premier Funding, Mr. Leighty and Mr. McCarty (the Related Parties), and has no interest in any of their business activities. In this regard, Mr. Manny states that he has done work in the past for the Related Parties. However, Mr. Manny's fees from the Related Parties represented less than one percent (1%) of his total annual billings. Mr. Manny further represents that for each year that he serves as the Independent Fiduciary for the Plans, his fees for serving in this capacity, combined with any other fees from the Related Parties, will not exceed 1% of his annual billings.

8. Mr. Manny states that he has reviewed the Lease and the Plans' investment portfolios. Mr. Manny concludes that the Lease will be protective of the Plans and consistent with the Plans' investment needs and objectives. In this regard, Mr. Manny notes that the fair market value of the Building, and the Leased Premises, represent less than twenty percent (20%) of each Plan's total assets, and also of the combined assets of the Plans.[18]

Mr. Manny states that the Lease will be in the best interest of the Plans and its participants. Mr. Manny believes that the Lease will be an appropriate investment for the Plans with adequate safeguards and protections.

9. Mr. Manny will monitor the terms and conditions of the Lease throughout its initial term and any renewal periods. Mr. Manny represents that he will have access to the books and records of the Plans, and will make sure that rental payments under the Lease are paid on time. Mr. Manny will review the Lease annually to ensure that all annual automatic adjustments to the rent are made based on the percent change in the CPI Index from the previous year. Mr. Manny will ensure that monthly rental payments are adjusted annually, as appropriate. Mr. Manny will also ensure that the adjusted rental payments never fall below the amount paid for the Leased Premises during the most recent annual period. Mr. Manny will monitor the value of the Building to ensure that each Plan's allocable portion of the Building and the Leased Premises represent no more than 20% of the total assets of each Plan throughout duration of the Lease.

Mr. Manny believes that the Lease is administratively feasible, in the best interest and protective of the Plans. As the Independent Fiduciary, Mr. Manny will represent the interests of the Plans at all times. Mr. Manny will monitor compliance by the LM Holdings, as the tenant, with the terms and conditions of the Lease, and will take whatever action is necessary to safeguard the interests of the Plans and its participants.[19]

10. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) All terms and conditions of the Lease are at least as favorable to the Plans as those which the Plans could obtain in an arm's-length transaction with an unrelated party;

(b) The fair market rental value of the Leased Premises has been determined by an independent qualified appraiser;

(c) Each Plan's allocable portion of the fair market value of both the Leased Premises and the Building will represent no more than 20% of the total assets of each Plan throughout the duration of the Lease;

(d) The interests of the Plans under the Lease are represented by the Independent Fiduciary;

(e) The fees received by the Independent Fiduciary, combined with any other fees derived from any related parties, will not exceed 1% of that person's annual income for each fiscal year that such person continues to serve in the independent fiduciary capacity with respect to the Lease;

(f) The Independent Fiduciary evaluated the Lease and deemed it to be administratively feasible, protective and in the best interest of the Plans;

(g) The Independent Fiduciary will monitor the terms and the conditions of the exemption (if granted) and the Lease throughout its duration, and will take whatever action is necessary to protect the Plans' rights;

(h) At the discretion of the Independent Fiduciary, the Lease can be extended for two additional five-year terms, provided that the Independent Fiduciary requires independent appraisals of the Leased Premises to be performed at the time of each extension of the Lease so as to ensure that LM Holdings continues to pay fair market rent, and such rent will not be less than the current base rate of $785 per month, or the amount paid on a monthly basis during the most recent annual term; and

(i) Within 90 days of publication in the **Federal Register** of a notice granting this proposed exemption, LM Holdings will file with the IRS Form 5330 (Return of Initial Excise Taxes for Pension and Profit Sharing Plans) and pay all excise taxes applicable under section 4975(a) of the Code that are due by reason of the existence of the Lease as a prohibited transaction prior to February 1, 1999.

Notice to Interested Persons

The applicant represents that, within five (5) business days of the publication of the notice of proposed exemption (the Notice) in the **Federal Register**, all interested persons will receive a copy of the Notice, and a copy of the supplemental statement, as required by 29 CFR 2570.43(b)(2). Comments and hearing requests on the proposed exemption are due thirty-five (35) days after the date of publication of the Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

The Unaka Company, Incorporated Employees' Profit Sharing Plan and Trust (the Plan) Located in Greenville, Tennessee

[Application No. D–10722]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

If the exemption is granted the restrictions of sections 406(a)(1)(A) through (D), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to:[20]

(a) The assignment (the Assignment) by the Plan to the Unaka Company,

[18] The applicant states that the approximate value of the Building is $210,495, which represents 11.5% of the P/S Plan and 11.5% of the M/P Plan. This is because the ownership of the building is allocated, as all other assets in the Plans, 60% to the P/S Plan and 40% to the M/P Plan. The applicants represent that all rents for office space in the Building are allocated in the same manner.

[19] In this regard, the applicant makes a request regarding a successor independent fiduciary. Specifically, if it becomes necessary in the future to appoint a successor independent fiduciary (the Successor) to replace Mr. Manny, the applicant will notify the Department sixty (60) days in advance of the appointment of the Successor. Any Successor will have the responsibilities, experience and independence similar to those of Mr. Manny.

[20] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

Incorporated (Unaka), the sponsoring employer and a party in interest with respect to the Plan, of any and all claims, demands, and/or causes of action which the Plan may have against certain members of the Plan Administrative Committee (the PAC) and other involved parties (collectively, the Responsible Fiduciaries) for breach of fiduciary duty under the Act, during the period from July 1, 1996 to July 31, 1998;

(b) In exchange for the Assignment, described in paragraph (a), above, the interest-free, non-recourse loan (the Loan) by Unaka to the Plan in an amount equal to the difference between $413 and the fair market value per share for the common stock of Unaka (the Stock) held by the Plan, in connection with the sale of such Stock by the Plan to Unaka, pursuant to the statutory exemption, as set forth in section 408(e) of the Act;[21]

(c) The possible repayment of such Loan to Unaka from the cash proceeds of the recovery, if any, from a judgment or settlement of the litigation against the Responsible Fiduciaries;

(d) The interest-free, non-recourse extension of credit (the Extension of Credit) by Unaka to the Plan of certain expenses arising out of the litigation against the Responsible Fiduciaries, effective as of, May 1, 1999, the date when expenses incurred by the Plan in bringing such litigation were first paid by Unaka; and

(e) The possible receipt by Unaka of reimbursement of such litigation expenses from the cash proceeds of the recovery, if any, from a judgment or settlement of the litigation against the Responsible Fiduciaries; provided that the following conditions are satisfied:

(1) The Plan will pay no interest in connection with the Loan or the Extension of Credit;

(2) None of the assets of the Plan will be pledged to secure either the amount of the Loan or the amount of the Extension of Credit;

(3) Repayment to Unaka of the amount of the Loan and reimbursement to Unaka of the amount of the Extension of Credit shall be restricted solely to the cash proceeds of the recovery, if any, from a judgment or settlement of the litigation against the Responsible Fiduciaries;

(4) To the extent the amount of the cash proceeds, if any, from any judgment or settlement of the litigation against the Responsible Fiduciaries is equal to or less than the amount due to Unaka as repayment for the Loan and reimbursement of the Extension of Credit, the Plan shall not be liable to Unaka for any amount;

(5) To the extent the cash proceeds, if any, from any judgment or settlement of the litigation against the Responsible Fiduciaries exceeds the total amount of the Loan, plus the amount of the Extension of Credit, such excess amount will be allocated to the accounts of the participants of the Plan; with the exception that no such allocation will be made to the account of Robert Austin, Jr. in the Plan;

(6) The transactions which are the subject of this exemption do not involve any risk of loss either to the Plan or to any of the participants and beneficiaries of the Plan;

(7) The Plan will not incur any expenses as a result of the transactions which are the subject of this exemption;

(8) Notwithstanding the Assignment by the Plan of its rights against the Responsible Fiduciaries, the Plan does not release any claims, demands, and/or causes of action which it may have against Unaka and/or its affiliates;

(9) All of the terms of the transactions are at least as favorable to the Plan as those which the Plan could obtain in similar transactions negotiated at arm's-length with unrelated third parties;

(10) The Plan receives no less than the fair market value for the Assignment, as of the date of the closing on the transfer of the Assignment;

(11) Prior to the Plan's entering the transactions, an independent, qualified fiduciary (the I/F), who is acting on behalf of the Plan and who is independent of Unaka and its affiliates, reviews, negotiates, and approves the terms and conditions of the Loan, the Assignment, and the Extension of Credit and determines that such transactions are prudent, administratively feasible, in the interest of the Plan and its participants and beneficiaries, and protective of the participants and beneficiaries of the Plan;

(12) Throughout the duration of the transactions, the I/F monitors the prosecution of the lawsuit against the Responsible Fiduciaries, including but not limited to monitoring all costs and fees incurred in connection with any litigation related to the proposed transactions, monitors the division of the recovery, if any, from any judgment or settlement of the litigation against the Responsible Fiduciaries to ensure that the Plan receives the portion to which it is entitled and that the Plan's interests are served, and monitors the terms and conditions of the proposed transactions to ensure that such terms and conditions are at all times satisfied;

(13) The I/F, acting on behalf of the Plan, shall have final approval authority over any proposed settlement of any legal proceedings against the Responsible Fiduciaries brought pursuant to the terms of the Assignment; and

(14) In the event the I/F resigns, is removed, or for any reason is unable to serve, including but not limited to the death or disability of such I/F, or if at any time such I/F does not remain independent of Unaka and its affiliates, such I/F will be replaced by a successor: (i) Who is appointed immediately upon the occurrence of such event; (ii) who is independent of Unaka and its affiliates; (iii) who is qualified to serve as the I/F; and (iv) who assumes all the duties and responsibilities of the predecessor I/F.

Summary of Facts and Representations

1. The Plan, established on February 1, 1967, but amended and restated on June 29, 1995, is a defined contribution profit sharing plan which is designed to qualify under section 401(a) of the Code. Contributions to the Plan are made by Unaka and by the participants in the Plan. The Plan is an individual account plan which does not provide for participant-directed investments. All contributions to the Plan are invested by the trustee of the Plan, pursuant to the funding policy and method, as determined by Unaka and by the Plan's investment manager.

Employees of Unaka and/or its subsidiaries are participants in the Plan. As of January 1, 1997, the Plan had approximately 1,142 participants. From January 1, 1997 to February 11, 1999, distributions of account balances were made to 209 participants, and 104 participants were added to the Plan. Accordingly, as of March 1, 1999, there were 1,037 participants in the Plan.

As of June 30, 1998, the Plan had approximately $16.8 million in assets on an unaudited basis, consisting of cash, mutual fund interests, government and corporate bonds, and shares of stock. It is represented that each participant's account shares a *pro-rata* portion of the overall value of the general assets of the Plan.

In the past, Unaka, as Plan administrator, has delegated to certain individuals, including, but not limited to certain officers and employees of Unaka, the responsibilities of administering the Plan. In this regard, until October 1997, the PAC

[21] The Department, herein, expresses no opinion as to the applicability of the statutory exemption provided by section 408(e) of the Act to the sale by the Plan of its Unaka Stock to Unaka or as to whether the conditions set forth in such statutory exemption are satisfied in the execution of such transaction. Further, the Department, herein, is offering no relief for transactions other than those proposed.

administered the Plan. It is represented that from June 1996 to October 1997, the PAC was comprised of Gordon H. Newman, Jerald K. Jaynes, Lonnie F. Thompson, and Gary Landes. From May 1995 to June 1996, the PAC was comprised of Gordon H. Newman, Robert Austin, Jr., and Gordon Chalmers. Prior to that time the PAC members were Gordon H. Newman, Terry O'Donovan, Powell Johnson, Dominick Jackson, and Ray Adams.

As discussed more fully below, in an agreement dated July 31, 1998, as amended March 25, 1999, and April 7, 1999, an independent, qualified individual was hired to serve as the trustee (the Trustee) of the Plan, and an institutional investment manager was engaged to manage the assets of the Plan and to serve as the I/F with respect to the transactions which are the subject of this proposed exemption.

2. Established in 1950 in Greeneville, Tennessee, Unaka is a holding corporation for the diverse industries of its wholly-owned subsidiaries. These subsidiaries consist primarily of the MECO Corporation, a manufacturer of barbecue grills and folding metal furniture, SOPAKCO, a warehouse operator and manufacturer of packaged foods, and Crown Point, an international food supply company specializing in the buying and selling of food commodities.

Unaka is a privately held corporation whose stock is not traded on any registered securities exchange. Another holding company, the Rolich Corporation (Rolich), owns approximately 61 percent (61%) of the 54,000 issued and outstanding shares of the Stock of Unaka which has a $10 par value. The Plan owns an additional 26 percent (26%) of the issued and outstanding shares of Stock of Unaka. Members of the Austin family, as discussed below, and various other individuals own the remaining 13 percent (13%) of the Unaka Stock.

3. In August of 1987, Robert Austin, Sr. purchased, through Rolich, a controlling interest in Unaka. It is represented that at that time, Rolich was owned by the members of the immediate family of Robert Austin, Sr. In connection with Robert Austin, Sr.'s obtaining control of Unaka, the Plan, on December 27 and 28, 1987, acquired 2,500 and 6,500 shares, respectively, of Unaka Stock directly from Unaka at a price of $220 per share. Subsequently, on October 1, 1989, the Plan purchased an additional 5,000 shares of Unaka Stock from Unaka at a price of $250 per share.[22]

With the deaths in 1990, of Robert Austin, and his wife, Mary T. Austin, a struggle for control of Rolich and Unaka ensued among their three children who are the heirs to their parents' estates. In this regard, most of the litigation involves the struggle for control of Unaka and Rolich among, Robert Austin, Jr., Lisa Austin, and Christy Austin. Additional litigation is associated with the members of Unaka's former management and with other shareholder derivative and non-derivative suits. It is anticipated that these various legal disputes may continue in the foreseeable future. However, it is represented that as of April 1997, Robert Austin, Jr. obtained majority ownership of Rolich and is currently serving as Chairman of the Board of Directors of Unaka.

4. In October of 1996, the Plan entered into an agreement to sell its Unaka Stock to Nothung, Inc. (Nothung), an entity owned by Robert Austin, Jr., for a minimum price of $413 per share. It is represented that certain Responsible Fiduciaries who were members of the PAC did not complete the sale of the Plan's Unaka Stock, pursuant to the agreement with Nothung. As a result, the PAC, acting on behalf of the Plan, failed to sell the Plan's Unaka Stock to Nothung in October of 1996. Subsequently, the offer to purchase the Plan's Unaka Stock, pursuant to the agreement with Nothung, lapsed on January 27, 1997.

5. With regard to the $413 per share price offered, pursuant to the agreement with Nothung, it is represented that Mercer Capital Management, Inc. (Mercer), an independent, qualified appraisal, valued the Plan's Unaka Stock, as of May 31, 1996, on a marketable, minority interest basis, at $413 per share. Of the three valuation methodologies, Mercer employed the income approach and the asset-based approach, but did not consider the market approach appropriate, because at the time of the appraisal there had been too few arm's length transactions in the Unaka Stock. Further, the Mercer appraisal did not discount the value of the Plan's Unaka Stock for lack of marketability, because: (1) Mercer believed it reasonable to assume that ongoing negotiations with Unaka would result in an option for Plan participants to put the shares to Unaka or to the Plan at the appraised fair market value; (2) Mercer accepted that the original investment by the Plan in Unaka Stock was based on assurances of reasonable treatment by the remaining shareholders; and (3) Mercer accepted representations from the Plan's legal counsel that there had been an intent and practice not to consider marketability discounts in the valuation estimates used in prior years.

6. The Plan currently holds 14,000 shares of Unaka Stock which Unaka has offered to purchase at a price equal to the fair market value of such Stock on the date the transaction is closed. It is represented that the proposed sale by the Plan to Unaka of the Plan's Unaka Stock will satisfy the criteria of section 408(e) of the Act.[23]

In anticipation of the sale of the Plan's Unaka Stock to Unaka and in anticipation of the transactions which are the subject of this proposed exemption, it is represented that an appraisal, as of June 30, 1998, of the fair market value of the Unaka Stock was prepared by Bernstein, Phalon & Conklin (BP&C), an independent, qualified appraiser, with offices in Dallas, Texas. In determining the value of the Unaka Stock, BP&C considered all three approaches to value, the income approach, the asset-based approach, and the market approach. The results of these valuation techniques applied to a minority interest of the Plan's Unaka Stock on a closely held basis were as follows:

Income approach
$283 per share
Asset-based approach
$334 per share
Market approach
$292 per share.

After giving slightly greater weight to the income approach, because that valuation method took into consideration the current and projected business operations of Unaka, BP&C determined that the fair market value of the equity of Unaka on a closely held, minority basis was $301 per share, as of June 30, 1998. Based on an appraised value of $301 per share, approximately $4.2 million of the Plan's assets are currently invested in Unaka Stock which constitutes approximately 25 percent (25%) of the total assets held by the Plan.

The applicant has represented that an updated appraisal of the Unaka Stock

[22] Unaka represents that the acquisition by the Plan of Unaka Stock both in December 1987, and October 1989, satisfied the criteria of section 408(e) of the Act. The Department, herein, expresses no opinion as to the applicability of the statutory exemption provided by section 408(e) of the Act to the acquisition in 1987 and 1989 of the Unaka Stock by the Plan or as to whether the conditions set forth in such statutory exemption were satisfied in the execution of such transactions. Further, the Department, herein, is offering no relief for transactions other than those proposed.

[23] *See*, footnote number 22, above.

will be obtained at the time of the closing of the sale of the Plan's Unaka Stock. In this regard, in the engagement letter, dated September 11, 1998, BP&C acknowledges its responsibility for providing the fair market value of the Plan's Unaka Stock, as of the date of the sale of such shares, and for issuing a fairness opinion regarding such sale, if appropriate.

7. In addition to the sale to Unaka of the Plan's Unaka Stock, it is represented that the Plan intends to sell, assign, transfer, and convey to Unaka any and all of the Plan's claims, demands, and causes of action (including reimbursement of reasonable legal fees, expenses, and costs) which the Plan may have against the Responsible Fiduciaries for breach of fiduciary duties during the period between July 1, 1996 to July 31, 1998. It is represented that this time span was chosen to cover the period during which the Responsible Fiduciaries were in control of the Plan and its assets and in order to cover any and all potential claims or causes of action that may arise out of any acts on the part of the Responsible Fiduciaries. In this regard, July 1, 1996, is the date Robert Austin, Jr. was removed from the PAC, and July 31, 1998, is the last date before the Trustee, who is the successor to the PAC, was appointed.

Included without limitation in the Assignment are all claims as to: (i) The value of the Unaka Stock held by the Plan, including its purchase, sale, transfer, voting, valuation, and appraisal; (ii) any offers, attempts, or agreements to purchase, transfer, assign, vote, pledge, or hypothecate such Stock, including but not limited to the offer/agreement to purchase the Stock made by Nothung in October 1996; and (iii) any third party claims, demands, and causes of action arising therefrom. Notwithstanding the Assignment by the Plan of its rights against the Responsible Fiduciaries, it is represented that the Trustee, on behalf of the Plan, will not release any claims, demands, and/or causes of action which the Plan may have against Unaka and/or its affiliates.

Due to the uncertainty of the outcome of the litigation between the Plan and the Responsible Fiduciaries, it is represented that it is difficult to calculate a precise value of the rights against the Responsible Fiduciaries which the Plan proposes to assign to Unaka. In this regard at the request of the I/F who is also the Plan's investment manager, BP&C were engaged on March 25, 1999, to express an opinion concerning the approximate fair market value of the Assignment. As part of the analysis, BP&C took into consideration: (i) The likelihood of the Plan prevailing successfully in the lawsuit against the Responsible Fiduciaries; (ii) the likelihood of collecting on any judgment awarded by the court; and (iii) the ability of the Plan to sell the Assignment to a willing buyer. Based on its analysis, BP&C concluded that the fair market value of the Assignment is negligible.

8. In exchange for the Assignment, Unaka proposes to lend to the Plan the difference between the value of $413 per share for the Unaka Stock (as set forth in the agreement with Nothung and as set forth in the 1966 Mercer appraisal) and the fair market value, as of the date the proposed transactions are closed, of the Plan's Unaka Stock, as determined by the I/F after considering the appraised value of such Stock at closing. Because the offer price for the Plan's Unaka Stock evidenced by the agreement with Nothung was based upon the Mercer appraisal which did not consider a discount for lack of marketability, it is the position of the applicant that the $413 per share appraised value of the Plan's Unaka Stock includes a ''premium.'' Although at the time of the agreement with Nothung, the applicant maintains that the Plan could have obtained a control premium for the sale of its Unaka Stock, it is represented that the Plan has no current or foreseeable ability to attract such a premium in the future. Furthermore, in the opinion of the applicant the proposed transaction will restore this ''premium,'' because there is no known market for the minority block of Unaka Stock held by the Plan.

9. In addition to the transactions described above, involving the Assignment and the Loan, relief has been requested for an Extension of Credit between Unaka and the Plan of the expenses arising out of the litigation against the Responsible Fiduciaries. In this regard, Unaka proposes to extend credit to the Plan of an amount equal to the cost incurred in bringing suit against such Responsible Fiduciaries. It is represented that due to constraints imposed by the statute of limitations, it will be necessary for the Plan to begin legal proceedings against the Responsible Fiduciaries, prior to the date when a final exemption can be granted for the proposed transactions. In this regard, Unaka has agreed (in anticipation of the subject transactions) to pay on behalf of the Plan, beginning May 1, 1999, all expenses incurred by the Plan in filing and pursuing the litigation against the Responsible Fiduciaries. Accordingly, relief, if granted, for the Extension of Credit, as described in paragraph (d) above, has been made effective, as of May 1, 1999. In the event a final exemption is issued, it is represented that all amounts paid by Unaka, prior to the Assignment, to cover the expenses incurred by the Plan in filing and pursuing the litigation against the Responsible Fiduciaries shall be added to such additional amounts expended by Unaka after the Assignment in connection with the legal proceedings against the Responsible Fiduciaries. In the event a final exemption is not granted by November 30, 1999, the Plan will have the option of continuing the litigation against the Responsible Fiduciaries, in its own right and at its own expense; but, Unaka shall not have the right to reimbursement for any payments made during the seven (7) months period from May 1, 1999, to November 30, 1999, of the Plan's expenses in connection with the litigation against the Responsible Fiduciaries.

It is represented that both the Loan and the Extension of Credit will be without interest and without recourse against the Plan. In this regard, repayment to Unaka of the amount of the Loan and reimbursement to Unaka of the amount of the Extension of Credit shall be restricted solely to the cash proceeds of the recovery, if any, from a judgment or settlement of the litigation against the Responsible Fiduciaries. It is represented that to the extent the cash proceeds of any judgment or settlement of the litigation against the Responsible Fiduciaries exceeds the total amount of the Loan, plus the amount of the Extension of Credit, such amount will be allocated to the accounts of the participants of such Plan, with the exception that no such allocation will be made to the account of Robert Austin, Jr. in the Plan. It is represented that to the extent the cash proceeds of the recovery, if any, from such litigation is equal to or less than the aggregate amount of the Loan and the Extension of Credit, the Plan will not be responsible for any amount. In this regard, it is represented that Unaka will waive the repayment of any outstanding balance on the Loan and any balance on the Extension of Credit.[24]

[24] It is represented that to the extent Unaka waives repayment of the outstanding balance of the Loan and the Extension of Credit, or to the extent that the Plan receives any excess recovery over the aggregate amount of the Loan and the Extension of Credit, Unaka will amend the Plan to specify the allocation of such amounts in a manner so as to ensure that the Plan will not violate either section 401(a)(4) or section 415 of the Code. Further, Unaka represents that it will submit an amendment to the Internal Revenue Service (the IRS) for a favorable determination letter for the Plan, as amended, by such amendment. Unaka represents that it will make any changes required by the IRS regarding such allocations.

Continued

10. As a fiduciary of the Plan and as an employer any of whose employees are covered by the Plan, Unaka is a party in interest with respect to the Plan, pursuant to section 3(14)(A) and 3(14)(C) of the Act. The proposed transactions will violate section 406(a)(1)(B) of the Act, because the execution of the Loan between Unaka and the Plan and the Extension of Credit by Unaka to the Plan each constitutes a lending of money between a plan and party in interest which is prohibited by the Act. In addition, the Assignment between the Plan and Unaka constitutes a transfer to, or use by or for the benefit of a party in interest of the income or assets of the Plan for which relief from section 406(a)(1)(D) of the Act would be necessary.

Further, the applicant has requested relief for violations of section 406(b)(1) and (b)(2) of the Act that may arise from Unaka's status as a sponsor and administrator of the Plan. In this regard, the proposed transactions could involve a fiduciary dealing with the assets of the plan in his own interest and/or acting in his individual capacity on behalf of a party whose interests are adverse to the interests of the plan or it participants and beneficiaries.

11. With respect to the proposed transactions, Unaka notes that a class exemption, Prohibited Transaction Class Exemption 80–26 (PTCE 80–26), provides an exemption for interest-free loans by parties in interest to plans. However, PTCE 80–26 is applicable where loan proceeds are used for payment of ordinary operating expenses of a plan or for a period of no more than three (3) days for a purpose incidental to the ordinary operation of a plan. It is represented that Unaka is uncertain whether the proposed transactions are of the type contemplated by class exemption PTCE 80–26.

However, Unaka points out that individual exemptions have been granted in cases involving an extension of credit from a plan sponsor to a plan and an assignment back from the plan to the plan sponsor of the plan's litigation rights and interests. In the opinion of Unaka, the fact that individual exemptions have been granted in similar circumstances indicates that the proposed transactions are in line with current administrative practices. Accordingly, Unaka believes that the request for an individual exemption is appropriate.

12. Unaka represents that the proposed transactions are administratively feasible in that the nature of the transactions does not require ongoing supervision by the Department. In this regard, the Plan has engaged the Trustee and the I/F, who is also the investment manager of the Plan. In addition, it is represented that all necessary safeguards are incorporated into the documents evidencing the Assignment, the Loan, and the Extension of Credit between the Plan and Unaka.

13. Unaka represents that the proposed transactions will preserve the value of retirement accounts of participants in the Plan and will ensure that such participants do not suffer from the failure by the Responsible Fiduciaries to sell the Unaka Stock, pursuant to the terms of the agreement with Nothung. In this regard, it is represented that denial of the proposed exemption would cause the participants of the Plan to shoulder the decline in the value of the Unaka Stock caused by events wholly outside their control. Further, the Plan would avoid an expensive and time-consuming litigation against the Responsible Fiduciaries the outcome of which is not assured. In addition, it is uncertain whether the Responsible Fiduciaries will have sufficient assets to satisfy a judgment, if one were to be awarded to the Plan.

14. Unaka represents that the proposed transactions are in the interest of the Plan in that such transactions will reinforce the participants' confidence in the security of their retirement funds and allow for diversification of assets. In this regard, the Plan will immediately receive the proceeds from the Loan and can, upon receipt, invest such proceeds in other assets to produce additional earnings for the participants in the Plan. Further, the Plan will benefit in that it will not incur any expenses as a result of the transactions.

15. Unaka represents that the terms of the proposed exemption adequately protect the rights of the participants and beneficiaries of the Plan. Neither the Loan nor the Extension of Credit will bear any interest. The assets of the Plan will not be pledged as collateral to secure the Loan or the Extension of Credit, nor will the assets of the Plan be used to repay the Loan or the Extension of Credit, other than solely from the cash proceeds of the recovery, if any, from a judgment or settlement of the litigation against the Responsible Fiduciaries. To the extent the amount of the cash proceeds from such recovery, if any, is equal to or less than the amount of the Loan and the amount of the Extension of Credit, it is represented that Unaka will waive the repayment of any outstanding balance on the Loan and any balance on the Extension of Credit. In short, it is represented that as a result of the proposed transactions, neither the Plan nor the participants will experience a risk of loss.

16. As an additional safeguard, pursuant to the terms of an agreement signed, July 31, 1998, as amended March 25, 1999, and April 7, 1999, the Strategic Investment Counsel Corporation (STRINCO) of Dallas, Texas, has agreed to serve as the I/F with respect to the proposed transactions and also to serve as the investment manager with respect to the investment and reinvestment of the assets of the Plan. Pursuant to the same agreement, Colin M. Henderson (Mr. Henderson), the President and chief investment officer of STRINCO, has accepted the appointment to serve, in his individual capacity, as the Trustee of the Plan.

It is represented that STRINCO, as the I/F and the investment manager for the Plan, has agreed to serve throughout the duration of the proposed transactions. The Department notes that the proposed exemption is conditioned upon the I/F, throughout the duration of the transactions, monitoring the prosecution of the lawsuit against the Responsible Fiduciaries, including but not limited to monitoring all costs and fees incurred in connection with any litigation related to the proposed transactions, monitoring the division of the recovery, if any, from any judgment or settlement of the litigation against the Responsible Fiduciaries to ensure that the Plan receives the portion to which it is entitled and that its interests are served, and monitoring the terms and conditions of the proposed transactions to ensure that such terms and conditions are at all times satisfied. The exemption contains a further condition that specifies that in the event the I/F resigns, is removed, or for any reason is unable to serve, including but not limited to the death or disability of such I/F, or if at any time such I/F does not remain independent of Unaka and its affiliates, such I/F will be replaced by a successor: (i) Who is appointed immediately upon the occurrence of such event; (ii) who is independent of Unaka and its affiliates; (iii) who is qualified to serve as the I/F; and (iv) who assumes all the duties and responsibilities of the predecessor I/F.

STRINCO has represented that it has extensive experience as a service

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To the extent that waiving the outstanding balance of the Loan and the Extension of Credit is deemed to be a contribution to the Plan, Unaka represents that such amounts will not be treated as a contribution prior to the date when such amounts are either repaid or waived. However, Unaka represents that it intends to deduct all such amounts deemed to be contributions to the Plan, as of the date they are so deemed.

provider to employee benefit plans. Further, STRINCO represents that it is independent of all of the parties to the proposed exemption. In this regard, the projected income from Unaka represent a small percentage of the projected revenues of STRINCO. Specifically, it is represented that STRINCO's revenues from fees paid by Unaka will constitute less than 3 percent (3%) of STRINCO's projected total revenues for 1999.

STRINCO has acknowledged its status as an independent fiduciary under the Act, including the responsibilities and duties of a fiduciary involving the assets of the Plan. Specifically, prior to the Plan's entering the transactions, STRINCO is responsible for reviewing, negotiating, and approving the terms and conditions of the Loan, the Assignment, and the Extension of Credit and determining whether such transactions are prudent, administratively feasible, in the interest of the Plan and its participants and beneficiaries, and protective of the participants and beneficiaries of the Plan. It is represented that STRINCO has been involved since its engagement in 1998, in the evaluation, analysis, and design of the proposed transactions. In this regard, STRINCO represents that it has at all times retained complete discretion as to the Plan's participation in the proposed transactions and has been actively involved in the negotiation of the terms of conditions of such transactions. Further, STRINCO represents that throughout the duration of the transactions, it will monitor the prosecution of the lawsuit against the Responsible Fiduciaries, including but not limited to monitoring all costs and fees incurred in connection with any litigation related to the proposed transactions; monitor the division of the recovery, if any, from any judgment or settlement of the litigation against the Responsible Fiduciaries to ensure that the Plan receives the portion to which it is entitled and that its interests are served; and monitor the terms and conditions of the proposed transactions to ensure that such terms and conditions are at all times satisfied. In addition, STRINCO, the I/F acting on behalf of the Plan, shall have final approval authority over any proposed settlement of any legal proceedings against the Responsible Fiduciaries brought pursuant to the terms of the Assignment. In this regard, it is represented that such final approval authority is not intended to and does not confer upon STRINCO, as I/F to the Plan, any authority to initiate settlement negotiations nor any right to negotiate any specific terms of settlement.

STRINCO has analyzed each of the three proposed transactions and has made independent investigation of the representations made as to each of the transactions, including significant due diligence into the background surrounding the failure of the Responsible Fiduciaries to sell the Plan's Unaka Stock, pursuant to the agreement with Nothung. It is represented that Mr. Henderson, as President of STRINCO, his counsel, and BP&C have visited the Unaka facilities, interviewed its officers and reviewed documentation involving the Plan, including minutes of the PAC meetings and certain minutes of the meetings of the Board of Directors of Unaka.

With respect to its analysis of the Loan, Assignment, and Extension of Credit, STRINCO states that the proposed transactions do not bind any of the Plan's assets as collateral. Furthermore, the proposed transactions, in the worst case, obtain a premium for the Plan in excess of any loss actually suffered by the Plan or its participants and beneficiaries. In this regard, STRINCO affirms that in the event no recovery is made in the suit against the Responsible Fiduciaries, the amount of Loan will be automatically forgiven, and the Plan will have gained a premium (*i.e.* cash equal to the difference between the price of the Plan's Unaka Stock, pursuant to the agreement with Nothung and the current fair market value of such shares). In the event a substantial amount is recovered in the suit against the Responsible Fiduciaries, the Plan will still gain a premium in recovering everything in excess of the amount of the Loan (less the expenses of litigation). In the opinion of STRINCO, regardless of the outcome of the litigation, the Loan puts the Plan and its participants and beneficiaries in the position they would have been in if the Unaka Stock had been sold to Nothung.

In order to receive the Loan, the Plan is required to enter into the Assignment. In the opinion of STRINCO, the Assignment allows a suit to be brought against the Responsible Fiduciaries without the Plan assuming any risks associated with such suit and without having to spend any of its own funds to do so. In light of Unaka's inability to retain any of the proceeds of such suit, other than recoupment of the outstanding balance of the Loan and any expenses of such litigation, in the opinion of STRINCO the Assignment has minimal, if any, value in the hands of the assignee. Based on this reasoning, STRINCO has concluded the proposed transactions are at least as favorable to the Plan as any transaction between the Plan and a third party.

With respect to the Extension of Credit by Unaka of the litigation expenses, STRINCO points out that, if the Plan were not to participate in the proposed transactions and instead bring suit in its own right against the Responsible Fiduciaries, the Plan would be required to pay the litigation expenses prior to any potential recovery and regardless of such recovery. Accordingly, STRINCO has concluded, based upon its analysis described above, that each of the proposed transactions represents a prudent and conservative course of action which is feasible and fair; in the best interests of the participants and beneficiaries; and protective of the assets of the Plan which are held for the exclusive benefit of the participants and beneficiaries.

17. In summary, the applicant represents that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act and 4975(c)(2) of the Code because:

(1) The Plan will pay no interest in connection with the Loan or the Extension of Credit;

(2) None of the assets of the Plan will be pledged to secure either the amount of the Loan or the amount of the Extension of Credit;

(3) Repayment to Unaka of the amount of the Loan and reimbursement to Unaka of the amount of the Extension of Credit shall be restricted solely to the cash proceeds of the recovery, if any, from a judgment or settlement of the litigation against the Responsible Fiduciaries;

(4) To the extent the amount of the cash proceeds, if any, from any judgment or settlement of the litigation against the Responsible Fiduciaries is equal to or less than the amount due to Unaka as repayment for the Loan and reimbursement of the Extension of Credit, the Plan shall not be liable to Unaka for any amount;

(5) To the extent the cash proceeds, if any, from any judgment or settlement of the litigation against the Responsible Fiduciaries exceeds the total amount of the Loan and the amount of the Extension of Credit, such amount will be allocated to the accounts of the participants of the Plan; with the exception that no such allocation will be made to the account of Robert Austin, Jr. in the Plan;

(6) The transactions which are the subject of this exemption do not involve any risk of loss either to the Plan or to any of the participants and beneficiaries of the Plan;

(7) The Plan will not incur any expenses as a result of the transactions which are the subject of this exemption;

(8) Notwithstanding the Assignment by the Plan of its rights against the Responsible Fiduciaries, the Plan, will not release any claims, demands, and/or causes of action which it may have against Unaka and/or its affiliates;

(9) All of the terms of the transactions are at least as favorable to the Plan as those which the Plan could obtain in similar transactions negotiated at arm's-length with unrelated third parties;

(10) The Plan receives no less than the fair market value for the Assignment, as of the date of the closing on the transaction;

(11) Prior to the Plan's entering the transactions, STRINCO, who is acting as I/F on behalf of the Plan and who is independent of Unaka and its affiliates, will review, negotiate, and approve the terms and conditions of the Loan, the Assignment, and the Extension of Credit and will determine that such transactions are prudent, administratively feasible, in the interest of the Plan and its participants and beneficiaries, and protective of the participants and beneficiaries;

(12) Throughout the duration of the transactions, STRINCO, as the I/F, will monitor the prosecution of the lawsuit against the Responsible Fiduciaries, including but not limited to monitoring all costs and fees incurred in connection with any litigation related to the proposed transactions; will monitor the division of the recovery, if any, from any judgment or settlement of the litigation against the Responsible Fiduciaries to ensure that the Plan receives the portion to which it is entitled and that its interests are served; and will monitor the terms and conditions of the proposed transactions to ensure that such terms and conditions are at all times satisfied;

(13) STRINCO, the I/F acting on behalf of the Plan, shall have final approval authority over any proposed settlement of any legal proceedings against the Responsible Fiduciaries brought pursuant to the terms of the Assignment; and

(14) In the event STRINCO resigns, is removed, or for any reason is unable to serve, or if at any time STRINCO does not remain independent of Unaka and its affiliates, STRINCO will be replaced by a successor: (i) Who is appointed immediately upon the occurrence of such event; (ii) who is independent of Unaka and its affiliates; (iii) who is qualified to serve as the I/F; and (iv) who assumes all the duties and responsibilities of STRINCO.

Notice to Interested Persons

Those persons who may be interested in the pendency of the requested exemption include any person who presently is a participant in the Plan or any other person who is entitled to receive benefits under the Plan. It is represented that these two classes of interested persons will be notified through different methods.

In this regard, it is represented that notification will be provided to all participants of the Plan who are present in the work environment of Unaka or its affiliates, within fifteen (15) calendar days of the date of publication of the Notice of Proposed Exemption (the Notice) in the **Federal Register** by posting on employee bulletin boards at those locations within the principal places of employment of Unaka and its affiliates which are customarily used for notices regarding labor-management matters for review. Such posting will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the supplemental statement (the Supplemental Statement), as required, pursuant to 29 C.F.R. § 2570.43(b)(2), which will advise such interested persons of their right to comment and to request a hearing.

It is represented that notification will be provided to any interested person who is entitled to benefits but who is not present in the work environment of Unaka or its affiliates by mailing first class within fifteen (15) calendar days of the date of publication of the Notice, a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 C.F.R. § 2570.43(b)(2), which will advise such interested persons of their right to comment and to request a hearing.

All written comments and requests for a hearing must be received by the Department no later than thirty (30) days from the date such interested persons receive, through posting or mailing, a copy of the Notice and the Supplemental Statement.

FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (This is not a toll-free number.)

General Motors Hourly Rate Employes Pension Plan, General Motors Retirement Program for Salaried Employes, Saturn Individual Retirement Plan for Represented Team Members, Saturn Personal Choices Retirement Plan for Non-Represented Team Members, Employees' Retirement Plan for GMAC Mortgage Corporation (collectively, the Plans), Located in New York, New York

[Application Nos. D–10473 through D–10476]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

Part I—Covered Transactions

If the proposed exemption is granted, the restrictions of section 406(a)(1)(A) through (D) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply effective December 11, 1998, to a transaction between AEW Industrial, L.L.C. (the LLC), an entity which currently holds ''plan assets'' of the Plans, or any subsidiary of the LLC (as defined in Part IV(d) below) which may hold ''plan assets'' of the Plans in the future, as a result of investments made by the Plans in the LLC or any subsidiary through the First Plaza Group Trust (the Trust), and a party in interest with respect to any of the Plans, provided that the Specific Conditions set forth below in Part II and the General Conditions set forth in Part III are met:

Part II—Specific Conditions

(a) In the case of a transaction by the LLC that involves the acquisition, financing, or disposition of any real property asset, the terms of the transaction are negotiated on behalf of the Plan by AEW Capital Management, L.P. or a successor thereto (AEW), under the authority and general direction of General Motors Investment Management Corporation (GMIMCo), a wholly-owned subsidiary of General Motors Corporation (GM), and GMIMCo makes the decision on behalf of the Plan to enter into the transaction.

Notwithstanding the foregoing, a transaction involving an amount of $5 million or more, which has been negotiated on behalf of the Plans by AEW and approved by GMIMCo in the manner described above, will not fail to meet the requirements of this Part II(a) solely because GM or its designee

retains the right to veto or approve such transaction;

(b) In the case of any transaction by the LLC that does not involve acquisitions, financings or dispositions of real property assets, the terms of the transaction are negotiated on behalf of the Plans by AEW, under the authority and general direction of GMIMCo, and either AEW or a property manager acting in accordance with written guidelines or business plans (including budgets), adopted with the approval of GMIMCo, makes the decision on behalf of the Plans to enter into the transaction. Notwithstanding the foregoing, a transaction involving an amount of $5 million or more, which has been negotiated on behalf of the Plans in accordance with the foregoing, will not fail to meet the requirements of this Part II(b) solely because GM or its designee retains the right to veto or approve such transaction;

(c) The transaction is not described in—

(1) Prohibited Transaction Exemption 81–6 (46 FR 7527, January 23, 1981), relating to securities lending arrangements,

(2) Prohibited Transaction Exemption 83–1 (48 FR 895, January 7, 1983), relating to acquisitions by plans of interests in mortgage pools, or

(3) Prohibited Transaction Exemption 88–59 (53 FR 24811; June 30, 1988), relating to certain mortgage financing arrangements;

(d) The transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest with respect to any of the Plans;

(e) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of GMIMCo, GM, or AEW the terms of the transaction are at least as favorable to the Plans as the terms generally available in arm's-length transactions between unrelated parties;

(f) The party in interest dealing with the LLC: (1) is a party in interest with respect to a Plan (including a fiduciary) solely by reason of providing services to the Plan, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H) or (I) of the Act; and (2) does not have discretionary authority or control with respect to the investment of the Plan's assets in the Trust or the LLC, and does not render investment advice, within the meaning of 29 CFR 2510.3–21(c), with respect to the investment of those assets in the Trust or the LLC;

(g) The party in interest dealing with the LLC is neither GMIMCo or AEW nor a person ''related'' to GMIMCo or AEW within the meaning of Part IV(c) below;

(h) GMIMCo adopts written policies and procedures that are designed to assure compliance with the conditions of this proposed exemption; and

(i) An independent auditor, who has appropriate technical training or experience and proficiency with the fiduciary responsibility provisions of the Act, and who so represents in writing, conducts an exemption audit, as defined in Part IV(f) below, on an annual basis. Following completion of the exemption audit, the auditor issues a written report to each Plan representing its specific findings regarding the level of compliance with the policies and procedure adopted by GMIMCo in accordance with Part II(h) above.

Part III—General Conditions

(a) At all times during the term of this exemption (if granted), GMIMCo shall be—

(1) A direct or indirect wholly owned subsidiary of GM, and

(2) An investment adviser registered under the Investment Advisers Act of 1940 that, as of the last day of its most recent fiscal year, has under its management and control total assets attributable to Plans maintained by GM or its affiliates (as defined in Part IV(a) of this exemption) in excess of $50 million. In addition, Plans maintained by affiliates of GMIMCo must have, as of the last day of each plan's reporting year, aggregate assets of at least $250 million;

(b) AEW or any successor, as investment manager for assets held by the LLC, meets the conditions for a ''qualified professional asset manager'' (QPAM) as set forth in section V(a) of Prohibited Transaction Class Exemption 84–14 (49 FR 9494, March 13, 1984);

(c) AEW and GMIMCo, or their affiliates, shall maintain, for a period of six years from the date of each transaction described above, the records necessary to enable the persons described below in part III(d)(1) to determine whether the conditions of this exemption (if granted) have been met, except that (1) a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of AEW or GMIMCo, or their affiliates, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest, other than AEW or GMIMCo, shall be subject to the civil penalty which may be assessed under section 502(i) of the Act or to the taxes imposed by sections 4975 (a) and (b) of the Code, if the records are not available for examination as required by section (d) below; and

(d)(1) Except as provided in subsection (2) of this section (d), and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in section (c) of this Part III shall be made unconditionally available by GMIMCo or AEW, at the customary location for the maintenance and/or retention of such records, for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service;

(B) The persons described in Part II(i) of this exemption (relating to an independent audit of covered transactions as discussed therein); and

(C) Any fiduciary of the Plans or the Trust;

(2) None of the persons described in subsections (1)(B) and (C) of this section (d) shall be authorized to examine trade secrets of AEW or GMIMCo, or commercial or financial information which is privileged or confidential in nature.

Part IV—Definitions

For purposes of this proposed exemption:

(a) ''Affiliate'' of GM means a member of either (1) a controlled group of corporations (as defined in section 414(b) of the Code) of which GM is a member, or (2) a group of trades or businesses under common control (as defined in section 414(c) of the Code) of which GM is a member; provided that ''50 percent'' shall be substituted for ''80 percent'' wherever ''80 percent'' appears in Code section 414(b) or 414(c) or the regulations thereunder.

(b) ''Party in interest'' means a person described in section 3(14) of the Act and includes a ''disqualified person'' as defined in section 4975(e)(2) of the Code.

(c) GMIMCo or AEW are ''related'' to a party in interest with respect to a Plan for purposes of this proposed exemption if the party in interest (or a person controlling or controlled by the party in interest) owns a five percent (5%) or more interest in GMIMCo or AEW, or if GMIMCo or AEW (or a person controlling or controlled by GMIMCo or AEW) owns a five percent (5%) or more interest in the party in interest. For purposes of this definition:

(1) ''Interest'' means with respect to ownership of an entity:

(A) The combined voting power of all classes of stock entitled to vote, or the total value of the shares of all classes of stock of the entity, if the entity is a corporation;

(B) The capital interest, or the profits interest of the entity, if the entity is a partnership; or

(C) The beneficial interest of the entity, if the entity is a trust or unincorporated enterprise;

(2) A person is considered to own an interest held in any capacity if the person has or shares the authority—

(A) To exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest, or

(B) To dispose or to direct the disposition of such interest; and

(3) ''Control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) ''Subsidiary'' means any limited liability company or other entity organized by the LLC, through which it acquires and holds title to its real property investments.

(e) An ''exemption audit'' of each Plan's interest in the LLC must consist of the following:

(1) A review of the written policies and procedures adopted by GMIMCo pursuant to Part II(h) for consistency with each of the objective requirements of this proposed exemption (as described herein);

(2) A test of a representative sample of the Plan's transactions through investments made by the LLC, as described in Part I, in order to make findings regarding whether GMIMCo is in compliance with both: (i) The written policies and procedures adopted by GMIMCo pursuant to Part II(i) of this proposed exemption; and (ii) the objective requirements of this proposed exemption; and

(3) Issuance of a written report describing the steps performed by the independent auditor during the course of its review and the independent auditor's findings regarding the Plan's interest in the LLC.

(f) For purposes of Part IV(e), the written policies and procedures must describe the following objective requirements of Part II of the proposed exemption and the steps adopted by GMIMCo to assure compliance with each of these requirements:

(1) The requirements of Part III;

(2) The requirements of sections (a) and (b) of Part II regarding the discretionary authority or control of GMIMCo with respect to the Plan assets involved in each transaction, in negotiating the terms of the transaction, and with regard to the decision made on behalf of the Plan, as an investor in the LLC, to enter into the transaction;

(3) The requirements of sections (a) and (b) of Part II with respect to any procedure for approval or veto of the transaction;

(4) That:

(A) The transaction is not entered into with any person who is excluded from relief under sections (f) or (g) of Part II; and

(B) The transaction is not described in any of the class exemptions listed in section (c) of Part II.

(g) ''Plan'' means an employee benefit plan established and maintained by GM or an Affiliate.

EFFECTIVE DATE: This proposed exemption, if granted, will be effective as of December 11, 1998.

Summary of Facts and Representations

1. General Motors Corporation (GM) and its Affiliates currently maintain the following employee benefit plans (i.e., the Plans): The General Motors Hourly-Rate Employees Pension Plan (the GM Hourly Plan); (ii) the General Motors Retirement Program for Salaried Employees (the GM Salaried Plan); (iii) the Saturn Individual Retirement Plan for Represented Team Members; (iv) the Saturn Personal Choices Retirement Plan for Non-Represented Team Members (together, the Saturn Plans); and (v) the Employees' Retirement Plan for GMAC Mortgage Corporation (the GMAC Plan). As of December 31, 1998, the Plans had total assets of approximately $73.2 billion, of which approximately $4.39 million were invested in private real estate assets.

2. For a portion of their assets, the Plans make investments through an entity known as the First Plaza Group Trust (i.e., the Trust), which is a group trust established pursuant to IRS Revenue Ruling 81–100. The trustee of the Trust, which acts as a directed trustee, is Chase Manhattan Bank (the Trustee). All beneficial interests in the Trust are held by two other trusts that hold the assets of the Plans. As of March 31, 1997, the Trust had total assets of approximately $4.1 billion. The General Motors Investment Management Company (i.e., GMIMCo) acts as an investment manager for the assets of the Plans held in the Trust (as discussed further below in paragraphs 9 and 10).

3. On September 13, 1996, CREA Western Investors II, L.L.C. (i.e., CREA II) and the Trust formed Copley West Coast Industrial, L.L.C. (now known as AEW Industrial, L.L.C.), a limited liability company (i.e., the LLC) for the purpose of jointly investing[25] in industrial real properties, under the terms of a Limited Liability Company Agreement (the LLC Agreement). The investment objective of the LLC is to acquire develop, lease, manage and dispose of institutional-grade real properties, including stabilized and opportunistic acquisitions, build-to-suit opportunities, and developments in certain West Coast markets. AEW acts as an investment manager for the assets held by the LLC, including the disposition and sale of LLC properties, subject to the review and approval of GMIMCo (as discussed further below).

4. The LLC was initially structured to qualify as a ''real estate operating company'' (REOC) pursuant to the Department's regulations at 29 CFR 2510.3–101 (the Plan Asset Regulation).[26] Effective December 11, 1998 (the Effective Date), the Trust acquired CREA II's interest in the LLC. The acquisition of CREA II's interest was negotiated by GMIMCo in reliance upon the Prohibited Transaction Class Exemption (PTCE) 96–23, (61 FR 15975, April 10, 1996).[27] By reason of the Trust's acquisition of CREA II's interest in the LLC, GM represents that the assets of the LLC became ''plan assets'' (within the meaning of the Plan Asset Regulation) as of the Effective Date, and the LLC and is no longer a REOC. Thus, all transactions engaged in by the LLC with any persons that are parties in interest with respect to any of the Plans invested therein became subject to the prohibited transaction restrictions of the Act. As a result, these transactions and future party in interest transactions require relief under this proposed exemption, pursuant to the terms and conditions described herein, as of the Effective Date.

5. CREA II is an affiliate of AEW Investment Group, Inc., a wholly-owned subsidiary of AEW Capital Management, L.P. (AEW Capital). AEW Capital is an indirect, wholly-owned subsidiary of New England Investment Companies, L.P. (NEIC), and is the successor to the business operations of Aldrich, Eastman & Waltch, L.P. and Copley Real Estate

[25] The Department is expressing no opinion in this proposed exemption as to whether the joint investments by the Trust and CREA II to form the LLC, or the ongoing operation of the LLC during such joint investment, violated any of the fiduciary responsibility provisions under Part 4 of Title I of the Act.

[26] The Department expresses no opinion herein as to whether the LLC met the definition of a REOC under the Plan Asset Regulation at any time.

[27] PTCE 96–23 (a/k/a the INHAM Class Exemption) permits various transactions involving employee benefit plans whose assets are managed by an in-house asset manager, or ''INHAM'', provided that the conditions of the exemption are met. An INHAM is a registered investment adviser which is either (a) a direct or indirect wholly-owned subsidiary of an employer or parent of an employer, or (b) a membership nonprofit corporation a majority of whose members are officers or directors of such an employer or parent organization.

Advisors. AEW Capital manages in excess of $9 billion in real estate assets. In addition, NEIC is a publicly-traded holding company with approximately $90 million in assets under management through its subsidiaries and affiliates. Pursuant to a 1996 merger between Metropolitan Life Insurance Company (Metropolitan) and the New England Life Insurance Company, NEIC is now owned approximately 50% by Metropolitan.

6. Pursuant to an agreement among AEW Capital, the Trust, and the LLC (the Investment Agreement), AEW Capital is required, during an exclusivity period specified therein, to utilize its reasonable best efforts to identify, for the benefit of the LLC, investments which meet the LLC's investment objectives. For each potential investment which is presented to the LLC for consideration, AEW Capital prepares a preliminary written proposal in accordance with the terms of the Investment Agreement. GMIMCo, on behalf of the Trust, then evaluates the potential investment for the LLC and determines whether the LLC should pursue the investment. If the Trust determines that the investment should be pursued for the benefit of the LLC, AEW Capital initiates a due diligence investigation of the investment. Due diligence and acquisition expenses can be incurred on behalf of the LLC only with the written consent of the Trust. If, after completion of due diligence, AEW Capital decides to present the potential investment to the LLC for acquisition, it prepares a report which includes a budget for all acquisition and development costs.

7. If GMIMCo, on behalf of the Trust, determines to proceed with the investment, AEW Capital has the primary responsibility for negotiating, finalizing and closing the investment, subject to the approved terms and conditions for the investment, including any related financings. However, AEW Capital does not have the authority to bind the LLC to any material definitive terms with respect to any investment, including price, without the prior review and written consent of GMIMCo on behalf of the Trust.

8. The Trust generally is not involved in the day-to-day management, development, or operation of LLC assets. Pursuant to the Advisory Agreement between AEW Capital and the LLC, AEW Capital has been retained by the LLC to provide certain services in connection with the ongoing management of the LLC, and to advise the LLC with respect to, and manage the disposition and sale of, LLC properties. GMIMCo, acting on behalf of the Trust, exercises sole discretion with respect to any final decisions regarding the disposition of LLC assets. Under the Advisory Agreement, AEW Capital is further obligated to provide certain services in connection with the development, operation, management, and leasing of LLC properties. AEW Capital is not responsible for directly providing management and development services but, rather, is responsible for engaging other parties to perform such services pursuant to development and property management agreements approved by the LLC investors.

9. GMIMCo is a separately-incorporated, wholly-owned subsidiary of GM and is a registered investment adviser under the Investment Advisers Act of 1940, as amended. GMIMCo is the named fiduciary, within the meaning of section 402(a)(2) of the Act, for purposes of investment of ''Plan assets'' for the GM Hourly Plan, the GM Salaried Plan, and the Saturn Plans. The named fiduciary of these four Plans for all other purposes is the Investment Funds Committee of the Board of Directors of GM (the GM I.F. Committee). With respect to the other Plans, GMIMCo currently operates as an investment manager with respect to the Plan assets to be invested in the LLC through the Trust under delegated authority of the named fiduciary of each Plan. The GMAC Mortgage Pension Committee (which is a committee of executives of the plan sponsor, not a board committee) is the named fiduciary of the GMAC Plan.

10. GMIMCo is involved in all aspects of the management of the assets of the Plans. In this regard, GMIMCo is organized into several distinct functions, as follows: North American Equities (U.S. and Canada); North American Fixed Income (U.S. and Canada); International Investments; Real Estate and Alternative Investments; Investment Strategy and Asset Allocation; Motors Insurance Corporation; Investment Research; Business Risk Management; Information Systems; Financial Accounting and Controls; Human Resources; and Legal. As of December 31, 1996, the Real Estate and Alternative Investments group (REAI) has approved aggregate current investments with a total value of approximately $4.1 billion and directly manages investments with a total value of approximately $1.3 billion, all of which are attributable to the Plans. REAI also exercises varying degrees of supervision over assets being managed by third party investment managers or invested in partnerships or other pooled funds. In addition, REAI selects, monitors, reviews and evaluates third party investment managers.

11. On and after the Effective Date, the Advisory Agreement provides for the retention by the Trust, and the exercise by GMIMCo on behalf of the Trust, of certain powers from which AEW is completely excluded. These retained powers (the Retained Powers), include the power:

(a) To determine whether the LLC or any subsidiary entity shall pursue any investment, acquisition or development;

(b) To cause any sale, transfer, assignment, conveyance, exchange or other disposition of all or any substantial part of any assets of the LLC or of any subsidiary entity;

(c) To cause the LLC or any subsidiary entity to borrow money, refinance, recast, extend, compromise or otherwise deal with any loans (including securing such loans) of the LLC or any subsidiary entity;

(d) To approve the annual business plans for the LLC; and

(e) To exercise all the powers that a member may exercise under the terms of the LLC operating agreement.

12. Although GMIMCo qualifies as an in-house asset manager (i.e., an INHAM) for the Plans within the meaning of PTCE 96–23 (the INHAM Class Exemption), that exemption might not apply to transactions engaged in by the LLC. The applicant states that the discussion of the comments relating to the INHAM Class Exemption contained in section A1 of the preamble to PTCE 96–23,[28] suggests that the exemption does not apply to a transaction where an INHAM retains a QPAM (i.e., a qualified professional asset manager)[29] to locate and negotiate the terms of a possible transaction. These comments state that the INHAM Class Exemption does not apply in such instances even though the INHAM performs its own due diligence review of each investment opportunity presented, and evaluates the appropriateness of the investment for the plan's particular investment needs. Thus, GMIMCo represents that there is an immediate need for this proposed exemption to permit transactions by the LLC.

13. GM represents that GMIMCo has not committed at this time a specified amount of Plan assets to be invested in

[28] See PTCE 96–23, 61 FR at 15976.

[29] In this regard, see PTCE 84–14, 49 FR 9497 (March 13, 1984). PTCE 84–14, a/k/a the QPAM Class Exemption, permits, under certain conditions, parties in interest to engage in various transactions with plans whose assets are managed by persons, defined for purposes of the exemption as QPAMs, which are independent of the parties in interest (with certain limited exceptions) and which meet specified financial standards.

the LLC. Rather, GM states that each approved investment by the Plans, through the Trust, constitutes a separate ''commitment'' of funds to the LLC and the fees to AEW Capital will be paid on the basis of each commitment, rather than on the total capital actually invested at any particular time. The applicant states further that all fees payable to AEW Capital will be reasonable and in compliance with section 408(b)(2) of the Act and the regulations thereunder.[30]

14. Investment opportunities in real property assets presented by AEW Capital to the Trust for consideration as possible acquisitions for the LLC are submitted to REAI (the responsible group within GMIMCo) for review and approval. REAI will perform a preliminary review of the investment opportunity for suitability, which includes verification that the proposed investment satisfies the broad investment guidelines relating to the Plans' investments in the Trust and specific investment objectives of the REAI portfolio.

15. Once AEW Capital has completed its initial due diligence review for the suitability of the investment and prepared its report with respect to a proposed acquisition of a property by the LLC, the REAI portfolio manager with responsibility for the LLC's investment portfolio (the Manager), assisted by an investment analyst, will conduct a quantitative and qualitative analysis of the investment opportunity. This analysis will form the basis for a recommendation of the investment to upper level officials within GMIMCo. The Manager and the Managing Director of REAI routinely discuss proposed investments, and any decision to recommend approval or to reject an investment is made jointly. Any rejection of an investment opportunity is recorded, and the reasons for such rejection are kept in a file containing the written materials relating to the investment. If the Manager and the Managing Director of REAI decide to recommend an investment to upper level GMIMCo officials, a written report is prepared summarizing the investment and briefly setting forth the reasons for such recommendation and the financial expectations for the investment.

16. After a proposed investment has been reviewed, analyzed and favorably approved by the Manager and the Managing Director of REAI, the additional levels of approval required in order for the investment to be finally authorized depend directly upon the amount of the investment. If the investment is not in excess of a threshold level, currently $30 million, it need only be approved by the REAI Investment Approval Committee. However, if the investment is greater than that amount, it must be approved by GMIMCo's president upon the recommendation of the REAI Investment Approval Committee. The REAI Investment Approval Committee consists of the Managing Director of REAI (who is Committee chairman) and the four REAI portfolio managers. Approval by the REAI Investment Approval Committee requires the affirmative vote of a majority of a quorum of the Committee members, including the affirmative vote of the Committee chairman. Final approval is based on the written report described above together with oral discussions regarding the proposed investment. Approval may take a variety of forms from a simple approval to an approval conditioned upon the resolution of certain issues. In all cases, a written record is maintained with respect to the action taken at each level of approval. Notwithstanding the procedure for the approval of any investment for the LLC by GMIMCo, GM or its designee may retain the right to veto or approve such transaction if the amount involved exceeds $5 million.

17. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (a) The exemption, if granted, will enable the Plans, through investments made in the LLC by the Trust, to transact business with a greater number of potential parties in interest with respect to such Plans; (b) The Plans will save significant costs relating to due diligence reviews and procedures that otherwise would be necessary for the LLC to avoid party-in-interest transactions; and (c) GMIMCo will be afforded maximum flexibility in overseeing the activities of the LLC, and will exercise sole authority on behalf of the LLC with respect to the Retained Powers to ensure that the Plans' interests are protected.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

[30] The Department is not providing any opinion herein as to whether the fee arrangements involving AEW Capital and the LLC meet the requirements for relief under section 408(b)(2) of the Act.

The Department notes that section 408(b)(2) of the Act does not exempt the payment of fees by a plan fiduciary which would constitute a violation of section 406(b) of the Act, even if such fees would otherwise constitute reasonable compensation for the services performed by the fiduciary (see 29 CFR 2550.408b–2(e)).

Gaetano Lombardo Individual Retirement Account (the IRA), Located in St. Louis, Missouri

[Application No. D–10749]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the IRA of 26,306 shares of stock (the Stock) of Courtesy Manufacturing Company (Courtesy) to Courtesy, a disqualified person with respect to the IRA, provided that the following conditions are satisfied: (1) The sale of Stock by the IRA is a one-time transaction for cash; (2) no commissions or other expenses are paid by the IRA in connection with the sale; and (3) the IRA receives the greater of: (a) the fair market value of the Stock as determined by a qualified independent appraiser as of October 31, 1998, or (b) the fair market value of the Stock as of the time of the sale.[31]

Summary of Facts and Representations

1. The IRA and Dr. Gaetano (Guy) Lombardo (Lombardo) currently own 100% of the outstanding common stock of Courtesy. Courtesy is an Illinois corporation, located at 1300 Pratt Boulevard in Elk Grove, Illinois, of which Lombardo is the sole director. The IRA had total assets of $838,039 as of January 31, 1999. The IRA's custodian is Stifel, Nicolaus & Company, Inc. of St. Louis, Missouri.

With respect to the current ownership of the outstanding shares of Courtesy, the IRA owns 26,306 Class A shares (i.e., the Stock) and Lombardo owns 2,194 Class A shares. Prior to December 29, 1998, the only other shareholders of Courtesy were Citicorp Venture Capital, Ltd. (Citicorp), which owned 12,450 shares of Class B common stock, and Goldman Sachs Credit Partners, LP (Goldman), which owned 7,550 shares of Class B common stock. The Class B shares owned by Citicorp and Goldman were redeemed by Courtesy on December 29, 1998. Citicorp received $900,000 for its shares, and Goldman received $200,000 for its shares.

[31] Pursuant to 29 CFR 2510.3–2(d), the IRA is not within the jurisdiction of Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

2. Lombardo and his then wife, Nancy (Nancy) were residents of Bloomfield Hills, Michigan in the 1980's. Lombardo was the sole shareholder of two Michigan consulting corporations, the Nelmar Corporation (Nelmar) and the Edens Corporation (Edens). Lombardo and Nancy were the only employees of Nelmar and Edens. Nelmar and Edens established the Nelmar-Edens Employees' Pension Plan (the Plan), a defined benefit pension plan for the employees of the two corporations in 1985. Nelmar and Edens merged in 1986, with Nelmar the surviving corporation. In February, 1988, the Plan acquired 30,000 shares of Class A common stock of Courtesy for $750,000 (i.e., $25 per share). The applicant represents that Courtesy was not a disqualified person with respect to the Plan.[32]

3. In December of 1988, the Plan transferred 1,500 of its Class A shares to Bruce Fisher (Fisher), an officer and employee of Courtesy. The price Fisher paid for the shares was the same price per share (i.e., $25 per share) that the Plan paid for the shares in February, 1988. Fisher subsequently tendered his shares in November, 1996, to Courtesy, for an agreed upon price of $44,723 ($29.82 per share). These shares have been redeemed by Courtesy and are currently held as treasury shares.

4. The Plan became overfunded and was terminated in 1989. Upon termination of the Plan, 2,194 shares of Courtesy reverted to Nelmar because of the overfunding. When distributions to the participants were made pursuant to the termination of the Plan, 7,022 shares of Courtesy were transferred to Nancy, which were rolled over into an individual retirement account established by her (Nancy's IRA), and 19,284 shares of Courtesy were transferred to Lombardo, where were rolled over into the IRA.

5. Nelmar was liquidated in 1991, following Lombardo's move from Bloomfield Hills, Michigan to Concord, Massachusetts in 1989. The 2,194 shares of Courtesy which had been owned by Nelmar were transferred by the corporation upon liquidation to Lombardo. This transfer was independent of the transfer of Courtesy Stock to either the IRA or Nancy's IRA. Lombardo and Nancy subsequently divorced, and the shares of Courtesy in Nancy's IRA were transferred to the IRA pursuant to a Qualified Domestic Relations Order.

[32] The Department is taking no position in this proposed exemption as to whether the Plan's acquisition and holding of Courtesy stock resulted in any violations of Part 4 of Title I of the Act.

6. Lombardo wants to make an election for Courtesy to be taxed as a ''Subchapter S'' Corporation under section 1362(a) of the Code. However, the IRA cannot be a shareholder of an ''S'' corporation. Accordingly, the applicant has requested an exemption to permit the IRA to sell all of the Stock (26,306 shares) to Courtesy for the fair market value of the Stock, as determined by an independent, qualified appraiser. This transaction would also permit the IRA to diversify its investment portfolio by reinvesting the proceeds of the sale of the Stock in a wider array of securities. The Stock currently represents approximately 94% of the fair market value of the assets in the IRA.[33]

7. The applicant has obtained an appraisal of the Stock as of October 31, 1998 from Michael A. Dorman (Mr. Dorman) of the firm of Blackman Kallick Bartenstein, LLP (BKB), independent certified public accountants and business consultants located in Chicago, Illinois. Mr. Dorman states that he is a qualified appraiser for the Stock with over 9 years of experience in the valuation of closely-held corporations and other business entities. Mr. Dorman also states that he is independent of Lombardo and Courtesy. While BKB does provide accounting services to Lombardo and Courtesy, BKB derives less than 1% of its annual revenue from the provision of such services. Mr. Dorman represents that as October 31, 1998, the Stock had a fair market value per share of $30. Thus, the total value for all the shares of Stock held by the IRA would be $789,180. Mr. Dorman will update his appraisal as of the date of the proposed sale.

[33] The Department notes that the Internal Revenue Service has taken the position that a lack of diversification of investments may raise questions in regard to the exclusive benefit rule under section 401(a) of the Code. *See, e.g.*, Rev. Rul. 73–532, 1973–2 C.B. 128. The Department further notes that section 408(a) of the Code, which describes the tax qualification provisions for IRAs, mandates that the trust be created for the exclusive benefit of an individual or his beneficiaries. However, the Department is expressing no opinion in this proposed exemption regarding whether violations of the Code have taken place with respect to the acquisition and holding of the Stock by the IRA.

In this regard, the acquisition and holding of the Stock by the IRA raises questions under section 4975(c)(1)(D) and (E) depending on the degree of Lombardo's interest in the transaction. That section prohibits the use by a disqualified person of the income or assets of an IRA or dealing by a fiduciary (i.e., Lombardo) with the income or assets of an IRA for his own interest or for his own account. An IRA participant who is the sole director and a shareholder of a company may have interests in the acquisition and holding of stock issued by such company which may affect his best judgment as a fiduciary of his IRA. In such circumstances, the holding of the stock may violate section 4975(c)(1)(D) and (E) of the Code. *See* Advisory Opinion 90–20A (June 15, 1990). Accordingly, to the extent there were violations of section 4975(c)(1)(D) and (E) of the Code with respect to the acquisition and holding of the Stock by the IRA, the Department is extending no relief for those transactions herein.

8. The applicant has requested the exemption proposed herein to permit Courtesy to purchase all of the Stock held in the IRA. Courtesy will pay the greater of (i) the fair market value of the Stock as of October 31, 1998, as established by Mr. Dorman's appraisal, or (ii) the fair market value of the Stock, based on an updated independent appraisal as of the date of the sale. The IRA will pay no fees, commissions or other expenses in connection with the transaction.

9. In summary, the applicant represent that the proposed transaction satisfies the criteria contained in section 4975(c)(2) of the Code because: (a) The proposed sale will be a one-time transaction for cash; (b) no commissions or other expenses will be paid by the IRA in connection with the sale; (c) the IRA will be receiving not less than the fair market value of the Stock, as determined by a qualified, independent appraiser; and (d) Guy Lombardo is the only participant in his IRA, and he has determined that the proposed transaction is appropriate for and in the best interest of his IRA and desires that the transaction be consummated with respect to his IRA.

NOTICE TO INTERESTED PERSONS: Because Lombardo is the only participant in the IRA, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due 30 days after publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and

beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 27th day of May, 1999.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 99–13887 Filed 6–2–99; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Extend and Revise a Current Information Collection

AGENCY: National Science Found.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request renewal of this collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing opportunity for public comments on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than 3 years.

DATES: Writen comments on this notice must be received by August 2, 1999, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR ADDITIONAL INFORMATION OR COMMENTS: Contact Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 306–1125 x2017; or send email to splimpto@nsf.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. You also may obtain a copy of the data collection instrument and instructions from Ms. Plimpton.

SUPPLEMENTARY INFORMATION:

Title of Collection: Survey of Graduate Students and Postdoctorates in Science and Engineering.

OMB Approval Number: 3145–0062.

Expiration Date of Approval: November 30, 1999.

Type of Request: Intent to seek approval to extend with revision an information collection for three years.

Proposed Project

Graduate students in science, engineering, and health fields in U.S. colleges and universities, by source and mechanism of support and by demographic characteristics. An electronic/mail survey, the Survey of Graduate Students and Postdoctorates in Science and Engineering originated in 1966 and has been conducted annually since 1972. The survey is the academic graduate enrollment component of the NSF statistical program that seeks to ''provide a central clearinghouse for the collection, interpretation, and analysis of data on the availability of, and the current and projected need for, scientific and technical resources in the United States, and to provide a source of information for policy formulation by other agencies of the Federal government'' as mandated in the National Science Foundation Act of 1950.

The proposed project will continue the current survey cycle for three to five years. The annual Fall surveys for 1999 through 2003 will survey the universe of approximately 725 reporting units at approximately 600 institutions offering accredited graduate programs in science, engineering, or health. The survey has provided continuity of statistics on graduate school enrollment and support for graduate students in all science & engineering (S&E) and health fields, with separate data requested on demographic characteristics (race/ethnicity and gender by full-time and part-time enrollment status). Statistics from the survey are published in NSF's annual publication series Graduate Students and Postdoctorates in Science and Engineering, in NSF publications Science and Engineering Indicators, Women, Minorities, and Persons with Disabilities in Science and Engineering, and are available electronically on the World Wide Web.

NSF proposes to revise the questionnaire in 1999 to include the Department of Energy as a source of funding of graduate students and to ask for the number of first-time full-time graduate students by race/ethnicity. These changes are being proposed for purposes of planning, policy formulation, and program evaluation and to provide consistency with other NSF surveys (e.g., on R&D expenditures). Two redundant items will be deleted from the questionnaire: The number of part-time students and the number of women part-time students. In addition, the names of the race/ethnicity categories will be changed to comply with the new OMB guidelines. The new categories will be: Black or African American; American Indian or Alaska Native; Asian; Native Hawaiian or Other Pacific Islander; Hispanic or Latino; and White. These changes are expected to result in minimal change in burden. Overall burden is expected to be reduced from 1999 to 2003 due to expansion of the Web-based data collection.

The survey will be sent primarily to the administrators at the Institutional Research Offices. To minimize burden, NSF instituted a Web-based survey in 1998 through which institutions can enter data directly or upload preformatted files. The Web-based survey includes a complete program for editing and trend checking and allows institutions to receive their previous year's data for comparison. Respondents will be encouraged to participate in this Web-based survey should they so wish. Traditional paper questionnaires will also be available, with editing and trend checking performed as part of the survey processing.

In Fall 1997, the survey achieved a total response rate of 98.5% for institutions and 98.3% for departments.

Estimate of Burden: Burden estimates are as follows:

	Total number of institutions	Departments	Burden hours
FY 1995	722	11,598	1.87
FY 1996	722	11,592	1.95
FY 1997	723	11,597	2.23

Respondents: Individuals.

Estimated Number of Responses: 11,597 (from the 1997 collection).

Estimated Total Annual Burden on Respondents: 23,690.

Frequency of Responses: Annually.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information 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 on respondents; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: May 28, 1999.

Suzanne H. Plimpton,

Reports Clearance Officer.

[FR Doc. 99–14035 Filed 6–2–99; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–27]

BWX Technologies (BWXT), Lynchburg, VA Issuance of Environmental Assessment Regarding the Proposed Exemption From the Requirement in 10 CFR 70.25(e) To Provide a Decommissioning Cost Estimate

The U. S. Nuclear Regulatory Commission (NRC or Commission) is considering issuance of an exemption to BWXT (the applicant) from the requirement of 10 CFR Part 70.25(e) to provide a decommissioning cost estimate (DCE) for the Naval Reactors (NR) work at BWXT. The BWXT facilities and operation are located at Lynchburg, Virginia.

Environmental Assessment

Identification of the Proposed Action: By letter dated April 8, 1999, and supplements dated May 10 and May 13, 1999, BWXT (the applicant) requested Materials License SNM–42 be amended to grant an exemption from the requirement of 10 CFR Part 70.25(e) to provide a decommissioning cost estimate (DCE) for the Naval Reactors (NR) programs at BWXT, located at Lynchburg, Virginia. In a letter dated April 9, 1999, from the U. S. Department of Energy (DOE), Office of NR, NR supported BWXT's request for an exemption.

Need for the Proposed Action: The BWXT operation involves the manufacturing of nuclear fuels for the U. S. Navy program. When BWXT's operations cease, the NRC will require decommissioning of the facilities and land in accordance with the requirements specified in 10 CFR 70.25. As described in the applicant's license amendment request and the NR April 9, 1999, letter, the exemption is requested in order to eliminate the need to prepare a detailed decommissioning cost estimate to be filed together with the Statement of Intent that the Federal government will be responsible for the cost of decommissioning. The following information, as detailed in the applicant's request and NR's letter, provide support for the exemption request: (1) The DOE, through NR, is contractually obligated to pay the expenses eventually incurred by BWXT in decommissioning the BWXT facilities associated with NR work; (2) NR has an adequate understanding of the potential costs of decommissioning the BWXT facilities used in NR work; (3) a detailed DCE prepared now will not be valid when decommissioning occurs many years from now; (4) exempting BWXT at this time from the requirement for a DCE would not endanger life or property or the common defense and security; and (5) the Federal Government will not obtain a benefit commensurate with the expenditure of public funds to prepare a detailed DCE.

Environmental Impact of the Proposed Action: The NRC staff has examined the applicant's proposed exemption request and concluded that the proposed exemption request is procedural and administrative in nature. Since the Federal Government will be responsible for the ultimate financial cost in the decommissioning of the applicant's facilities, exempting BWXT at this time from the requirement for a DCE will not endanger life or property, or the common defense and security, and will not cause any environmental impact.

Alternatives to the Proposed Action: Since there is no environmental impact associated with this proposed action, no alternatives other than the proposed action were evaluated.

Agencies and Persons Consulted: No other agency or persons were consulted for this proposed action since the proposed action is procedural and administrative in nature and the final financial cost for the decommissioning of the applicant's facilities is assured by the Federal Government.

Finding of No Significant Impact

As discussed above, the proposed action is procedural and administrative in nature and there is no environmental impact associated with this action. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

This application for the proposed action was docketed under 10 CFR part 70, Docket No. 70–27. For further details with respect to this action, see the April 8, 1999, exemption request, and other above-mentioned letters which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20555.

Dated at Rockville, Maryland, this 27th day of May 1999.

For the Nuclear Regulatory Commission.

Theodore S. Sherr,

Chief, Licensing and International Safeguards Branch, Division of Fuel Cycle Safety and Safeguards, Office of Material Safety and Safeguards.

[FR Doc. 99–14049 Filed 6–2–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 110th meeting on June 28–30, 1999, at the Center for Nuclear Waste Regulatory Analyses, Southwest Research Institute, 6220 Culebra Road, Building 189, San Antonio, Texas.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Monday, June 28, 1999—8:30 a.m. until the conclusion of business.

Tuesday, June 29, 1999—8:30 a.m. until the conclusion of business.

Wednesday, June 30, 1999—8:30 a.m. until 4:00 p.m.

The following topics will be discussed:

A. *ACNW Planning and Procedures*—The Committee will hear a briefing from its staff on issues to be covered during this meeting. The Committee will also consider topics proposed for future consideration by the full Committee and Working Groups. The Committee will discuss ACNW-related activities of individual members.

B. *Review Activities Underway at the Center for Nuclear Waste Regulatory Analyses (CNWRA)*—The Committee will review activities underway at the CNWRA. Discussions will include an overview of the Center, including its historical evolution. Each of the 10 high-level waste key technical issues (KTIs) will be reviewed with special emphasis placed on four KTIs: Igneous Activity, Evolution of the Near-Field, Repository Design and Thermal Mechanical Effects, and Container Life and Source Term.

C. *Laboratory Tours*—The Committee will visit a number of experiments underway at the Center involving: hydrology and thermal-hydrology, geochemistry and radionuclide transport, structural geology modeling, and materials performed.

D. *Yucca Mountain Environmental Impact Statement*—The Committee will review the staff's plans for reviewing the Department of Energy's Draft Environmental Impact Statement for the Yucca Mountain project.

E. *Total-System Performance Assessment (TPA) Code 3.2 Sensitivity Study*—The Committee will review the results of the system level sensitivity and uncertainty analyses to determine the parameters that have the most influence on repository performance.

F. *Defense In-Depth*—The NRC staff and the CNWRA will discuss the current concept of defense in-depth as it applies to a high-level waste repository.

G. *Environmental Protection Agency (EPA) Yucca Mountain Site Specific Standards* (tentative)—The Committee may offer comments to the Nuclear Regulatory Commission on EPA's Yucca Mountain site specific standard 40 CFR part 191 should the proposed standard be made publicly available. The timing for release of the standard remains uncertain.

H. *Preparation of ACNW Reports*—The Committee will discuss planned reports on the following topics: a White Paper on Repository Design Issues at Yucca Mountain and other topics discussed during this and previous meetings as the need arises.

I. *Miscellaneous*—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on September 29, 1998 (63 FR 51967). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the Associate Director for Technical Support, ACNW, Dr. Richard P. Savio, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the Associate Director for Technical Support, ACNW, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Dr. Savio as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Dr. Richard P. Savio, Associate Director for Technical Support, ACNW (Telephone 301/415–7363), between 8:00 a.m. and 5:00 p.m. EDT.

ACNW meeting notices, meeting transcripts, and letter reports are now available for downloading or reviewing on the internet at http://www.nrc.gov/ACRSACNW.

Dated: May 27, 1999.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 99–14048 Filed 6–2–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Proposed Revision to Standard Review Plan (NUREG–0800), Chapter 13, ''Conduct of Operations, Sections 13.1.1, ''Management and Technical Support Organization,'' and 13.1.2–1.3, ''Operating Organization''

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) has prepared a revision to NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants—LWR Edition,'' Chapter 13, ''Conduct of Operations,'' sections 13.1.1, ''Management and Technical Support Organization,'' and 13.1.2–1.3, ''Operating Organization.'' The Standard Review Plan (SRP) contains guidance used by the staff to review safety analysis reports for light water reactor commercial nuclear power plants. The proposed revision incorporates changes that have been made since the sections were last revised in April, 1996, and publically noticed in the **Federal Register**, Vol. 61, No. 162, Tuesday, August 20, 1996. There were no public comments received to these sections. The proposed revision addresses 10 CFR 50.80 requirements for ''Transfer of Licenses.'' Specifically, the staff has revised Chapter 13, ''Conduct of Operations,'' sections 13.1.1, ''Management and Technical Support Organization,'' and 13.1.2–1.3, ''Operating Organization'' of the SRP as they relate to 10 CFR 50.80 requirements for the applicant's technical qualifications. The April, 1996 revision of these SRP sections did not include guidance for the staff to review the technical qualifications of applicants for license transfer.

The purpose of this notice is to solicit specific public comment on whether the revised text accurately and fully reflects the established NRC staff positions and existing regulations. The SRP is made available to the public as part of the NRC's policy to inform the nuclear industry and the general public of regulatory procedures and policies. The SRP is not a substitute for regulatory guides or NRC regulations. Compliance with the SRP is not required. The published SRP will be revised periodically, as appropriate, to accommodate comments and reflect new information and experience. The NRC encourages comment from all interested parties; however, public

review is not intended to reopen a dialogue on the merits of the requirements themselves but, rather, should be focused on the previously stated purpose.

DATES: The comment period expires July 6, 1999. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail comments to: Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Mail Stop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments may be hand delivered to 11545 Rockville Pike, Maryland, between 7:45 a.m. and 4:15 p.m., on Federal workdays.

FOR FURTHER INFORMATION CONTACT: James P. Bongarra, Jr., U.S. NRC, Office of Nuclear Reactor Regulation, Mail Stop O9D24, Washington, DC, 20555; telephone (301) 415–1046; e-mail:jxb@nrc.gov.

SUPPLEMENTARY INFORMATION: The proposed revised text to NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants—LWR Edition,'' is the work of the NRC staff. It has received review by the Director, Division of Inspection Program Management, Office of Nuclear Reactor Regulation, and the NRC's Office of General Counsel. A final revision will be published upon resolution of public comments and review by the Director, Office of Nuclear Reactor Regulation, the NRC's Committee to Review Generic Requirements (CRGR), and the Advisory Committee on Reactor Safeguards (ACRS).

The proposed revision to NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants—LWR Edition,'' Chapter 13, ''Conduct of Operations,'' sections 13.1.1, ''Management and Technical Support Organization,'' and 13.1.2–1.3, ''Operating Organization,'' follows:

NUREG–0800—Standard Review Plan, Chapter 13, Conduct of Operations

13.1.1 Management and Technical Support Organization

Review Responsibilities

Primary—Human Performance Branch
Secondary—None

I. Areas of Review

The branch with primary responsibility for reviewing human performance will review the corporate level management and technical organization of the applicant for a construction permit (CP), operating license (OL), combined license (COL), or license transfer. The review will also include the applicant's major contractors including the nuclear steam supply system (NSSS) vendor, and architect/engineer (A/E) for the project. The technical resources to support the nuclear power plant design, construction, testing, and operation are reviewed. The review for a CP or COL will include an examination of the responsibilities, technical staff, interface arrangements, and management controls used to ensure that the design and construction of the facility will be performed in an acceptable manner. The review for an OL or COL will examine the applicant's corporate organization and technical staff that will provide support for safe plant operation. The review for license transfer will examine the acceptability of any changes to the technical organization or personnel qualifications proposed as a result of a license transfer under 10 CFR 50.80.

The objective of this review is to ensure that the corporate management is involved with, informed of, and dedicated to the safe design, construction, test and operation of the nuclear plant. In addition, the review is to ensure that sufficient technical resources have been, are being and will continue to be provided to adequately accomplish these objectives.

A. Reviews of Initial Construction Permit (CP) and Early Stage Combined License (COL) or Reviews of Transfer of Construction Permits (CP) and Early Stage Combined License (COL)

The applicant's past experience in the design and construction of nuclear power plants, and past experience in activities of similar scope and complexity should be described. The applicant's management, engineering, and technical support organization should also be described. The description should include organizational charts for the current headquarters and engineering structure, as well as planned modifications and additions to those organizations to reflect the added functional responsibilities associated with the nuclear plant.

1. Design and Construction Responsibilities

A description of the implementation or delegation of design and construction responsibilities should be included for the following:

a. Principal site-related engineering work such as meteorology, geology, seismology, hydrology, demography, and environmental effects.

b. Design of plant and ancillary systems, including fire protection systems.

c. Review and approval of plant design features, including human factors engineering (HFE) considerations.

d. Site layout with respect to environmental effects and security provisions.

e. Development of safety analysis reports (SARs).

f. Material and components specification review and approval.

g. Procurement of materials and equipment.

h. Management of construction activities.

2. Preoperational Responsibilities

A description of the proposed plans for the management organization related to the initial test program should include the following:

a. Development of plans for the preoperational and startup testing of the facility.

b. Development and implementation of staff recruiting and training programs.

c. Development of plant maintenance programs.

The descriptions of the design and construction and preoperational responsibilities should include the following:

a. How these responsibilities are assigned by the headquarters staff and implemented within the organizational units;

b. Identification of the responsible working or performance level organizational unit;

c. An estimate of the number of persons expected to be assigned to each of the various units with responsibility for the project;

d. The general educational backgrounds and experience requirements for qualification in identified positions or classes of positions;

e. The role of the applicant's management in interfacing with the NSSS and A/E organizations;

f. Specific educational and experience background for assigned management and supervisory positions; and

g. The required review of contractor work by the applicant's staff.

h. For identified positions or classes of positions that have functional responsibilities other than the CP or COL application, the expected proportion of time assigned to the other activities should be described.

i. The early plans for providing technical support for the operation of the facility should be described.

The CP- or COL-stage review of the NSSS and A/E organizations includes an evaluation of the ability of the technical staff of each organization to support or perform the activities specified in the application, as applicable. The information submitted should include a description of the specific activity (including scope) to be engaged in, organizational description and charts reflecting organizational lines of authority and responsibility for the project, the number of persons assigned to the project, and qualification requirements for principal management positions related to the project. For those NSSS and A/E organizations with extensive experience, a detailed description of this experience may be provided in lieu of the details of their organization as evidence of technical capability. However, a specific description should be provided of how this experience will be applied to the particular project.

B. Operating License (OL and COL) Reviews

The SAR should provide the following information:

1. Organizational charts of the applicant showing the corporate level management and technical support;
2. The relationship of the nuclear oriented portions of the structure to the rest of the corporate organization;
3. A description of the specific provisions which have been made for technical support for operations; and
4. The organizational unit and any augmenting organizations, or other personnel who will manage or execute any phase of the test program, including the responsibilities and authorities of principal participants.

Technical services and backup support for the operating organization should become available in advance of the conduct of the preoperational and startup testing program and continue throughout the life of the plant.

The SAR should (1) Describe approximate numbers, educational background, and experience requirements for each identified position or class of positions providing technical support for plant operations, and (2) include specific educational and experience background for individuals holding the management and supervisory positions providing support in the areas identified below.

The special capabilities that should be included in the support for the operation of the plant are:

1. Nuclear, mechanical, structural, electrical, thermal-hydraulic, metallurgical and materials, and instrumentation and controls engineering.
2. Plant chemistry.
3. Health physics.
4. Fueling and refueling operations support.
5. Maintenance support.
6. Operations support.
7. Quality assurance.
8. Training.
9. Safety review.
10. Fire protection.
11. Emergency organization.
12. Outside contractual assistance.

C. Reviews of Transfer of Operating License (OL) and Late Stage Combined License (COL)

An applicant for transfer of an operating license should provide a description of the organization to support plant operations. The description should include:

1. Organizational charts showing the corporate level management and technical support organization and emphasizing the changes to be made as a result of the transfer;
2. The relationship of the nuclear oriented portions of the organization to the rest of the corporate organization; and
3. A description of the specific provisions which have been made for technical support for operations.

D. Review Interfaces

The branch with primary responsibility for human performance reviews performs the following reviews under the SRP sections indicated:

SRP Sections 13.1.1 through 13.1.3—for organizational structure, personnel qualifications and experience
SRP Section 13.2.1—for training for licensed operators
SRP Section 13.4—for organizational provisions for independent reviews and verifications
SRP Section 13.5.2—for procedure adequacy
SRP Section 18.0—for use of human factors engineering principles

The branch with primary responsibility for human performance will coordinate evaluations and reviews by other branches that interface with the overall review of the management and technical support organization as follows:

1. With the branch responsible for Emergency Preparedness and Radiation Protection, as part of its primary review responsibility for SRP section 13.3, for the acceptability of the emergency organization and as part of its primary review responsibilities for SRP section 12.5, for the acceptability of the radiation protection organization.
2. With the branch responsible for Safeguards as part of its primary review responsibility for SRP section 13.6 for the acceptability of the applicant's plans and provisions for security, including the security organization.
3. With the branch responsible for Quality Assurance, as part of its primary review responsibility for SRP chapter 17, for the acceptability of the quality assurance organization and, as part of its primary review responsibilities for SRP section 13.4, for the acceptability of the organization of the independent safety engineering group (ISEG).
4. With the branch responsible for Plant Systems, as part of its primary review responsibility for SRP section 9.5.1, for the acceptability of the organization responsible for fire protection.

For those areas of review identified above as being part of the review under other SRP sections, the acceptance criteria necessary for the review and their methods of application are contained in the referenced SRP sections.

II. Acceptance Criteria

A. General Guidance

The applicant's description of its resources to deal with safety-related problems connected with the proposed addition of nuclear generating capacity should provide contributory evidence as to the technical qualifications of the applicant, as required by 10 CFR 50.40(b) and 10 CFR 50.80, as applicable.

In the review and evaluation of the subject matter of this section of the SAR, the following points should be taken into consideration.

1. The corporate level management and technical support structure, as demonstrated by organizational charts and descriptions of functions and responsibilities, should be free of ambiguous assignments of primary responsibility.
2. A corporate officer should be clearly responsible for nuclear activities, without having ancillary responsibilities that might detract attention to nuclear safety matters.
3. Design and construction responsibilities should be reasonably well defined in both numbers and experience of persons required to implement their responsibilities.
4. Similarly, management and organizational responsibilities should be clearly defined with regard to human factors engineering (HFE) considerations in the management of human-system interface issues. This subject is addressed in more detail in NUREG–

0711 and in SRP Chapter 18 (DRAFT, April 1996).

B. Specific Criteria

Specific criteria which contribute to meeting 10 CFR 50.40(b) with respect to the CP, OL, or COL reviews and 10 CFR 50.80 with respect to license transfer reviews are described below.

For Review of Initial Construction Permit (CP) and Early Stage Combined License (COL) or for Review of Transfer of Construction Permit (CP) and early Stage Combined License (COL)

1. The applicant has identified and functionally described the specific organizational groups responsible for implementing responsibilities for the project.
2. The applicant has described the method of implementing its responsibilities for dealing with the safety-related aspects of the design and construction of the project and the transition to operation of the facility, including control of major contractors.
3. Clear, unambiguous management control and communications exist between the organizational units involved in the design and construction of the project.
4. Substantive breadth and level of experience and availability of manpower exist to implement the responsibility for the project.
5. The applicant has clearly described the role and function of the A/E and NSSS vendor during both design and construction and has demonstrated appropriate control over the project-related activities of the A/E and NSSS vendor.
6. The applicant has designated the responsible organizations that will participate in the test program and early plans indicate reasonable assurance that such designated organizations can collectively provide the necessary level of staffing with suitable skills and experience to develop and conduct the test program.
7. The applicant plans to utilize the plant operating and technical staff in the development and conduct of the test program and in the review of test results.
8. For COL applicants subject to 10 CFR 50.34(f), the applicant has identified plans for the organization and staffing to oversee design and construction of the nuclear facility in accordance with the guidelines of Item II.J.3.1 of NUREG–0718 as related to the requirements of 10 CFR 50.34(f)(3)(vii). As reflected in SRP Section 18.0, (DRAFT, April 1996) the review criteria for the human factors engineering (HFE) design team is provided in NUREG–0711, Chapter 2, ''Element 1—HFE Program Management.''

Although the requirements of 10 CFR 50.34(f) apply only to the specific applicants listed in that section, OL applicants should include information related to the organizational and management structure responsible for the design and construction of the proposed plant to ensure that the staff has complete and accurate information for its review.

For Review of Operating License (OL) and Later Stage Combined License (COL)

The review and evaluation of management and technical organizational structure for OL and COL applicants is based on the guidelines of TMI Action Plan Item I.B.1.2 originally described in NUREG–0694. Specific criteria are as follows:

1. The applicant has identified and described the organizational groups responsible for implementing the initial test program, and technical support for the operation of the facility.

2. The applicant has described the method of implementing its responsibilities for dealing with the initial test program, technical support, and operation of the facility.

3. The organizational structure provides for the integrated management of activities that support the operation and maintenance of the facility.

4. Clear management control and effective lines of authority and communications exist between the organizational units involved in the management, operation, and technical support for the operation of the facility.

5. Substantive breadth and level of experience and availability of manpower exist to implement the initial test program and technical support for the operation of the facility. The need to supplement the corporate structure with additional experienced personnel for the initial years of operation will be determined on case-by-case basis.

6. Qualifications of members of the technical support organization should meet or exceed those endorsed by Regulatory Guide 1.8.

7. The technical staff will be utilized in the initial test program to the maximum extent practicable. Participants in the test program should receive plant-specific training/indoctrination in the administrative controls for the test program prior to the start of testing. The level of staffing should be adequate based on the reviewer's judgment.

For Review of Transfer of Operating License (OL) and Later Stage Combined License (COL)

The criteria for the review and evaluation of management and technical organizational structure for license transfer applicants are as follows:

1. The applicant has identified and described the organizational groups responsible for the technical support for the operation of the facility.
2. The applicant has described the method for implementing the technical support and operation of the facility.
3. The organizational structure provides for the integrated management of activities that support the operation and maintenance of the facility.
4. Clear management control and effective lines of authority and communications exist between the organizational units involved in the management, operation, and technical support for the operation of the facility.
5. Substantive breadth and level of experience and availability of manpower exist to implement the technical support for the operation of the facility.
6. Qualifications of members of the technical support organization should meet or exceed those endorsed by Regulatory Guide 1.8.

C. Technical Rationale

The technical rationale for application of the above acceptance criteria to the review of the management and technical support organization is discussed in the following paragraphs.

1. Compliance with the relevant requirements of 10 CFR 50.40(b) requires that the applicant be technically qualified to engage in activities associated with the design, construction, and operation of a nuclear power plant in accordance with the regulations in 10 CFR 50. Similarly, 10 CFR 80 requires that the applicant for the transfer of a license be technically qualified to be the holder of the license.

The management and technical support organization established by the applicant to oversee the design and construction of a nuclear power plant provides valuable insight into the corporate management's understanding of its safety role in the design, construction, operation, and maintenance of the facility. This information contributes to the determination that an applicant is technically qualified by ensuring that appropriate considerations were used in the establishment of general qualification requirements and staffing levels for all key positions on which the safety of the facility will depend.

Meeting the requirements of 10 CFR 50.40(b) and 10 CFR 80, as applicable, provides assurance that the applicant is technically qualified to engage in the proposed activities and has established the necessary management and technical support organization to safely operate the proposed facility.

III. Review Procedures

Preparation for reviewing the application should include familiarization with the documents listed as references in this SRP section.

Each element of the application information is to be reviewed against this SRP section. The reviewer's judgment during the review is to be based on an inspection of the material presented, whether items of special safety significance are involved, and the magnitude and uniqueness of the project. Any exceptions or alternatives are to be carefully reviewed to ensure that they are clearly defined and that an adequate basis exists for acceptance.

The applicant should identify the applicable version of references, Regulatory Guides, and Codes and Standards used. The reviewer should identify the applicable version of references, Regulatory Guides, and Codes and Standards used in the review.

In the review and evaluation of the information related to this section of the management and technical support organization, the following points should be taken into consideration:

A. In the early construction stage, the applicant's plans for headquarters staffing to provide technical support when operating may not yet be firm. It is acceptable, therefore, if these plans are not fully specific in terms of numbers of people, provided the commitment made is sufficiently firm to ensure the responsibility can be met.

B. The reviewer must recognize that there are many acceptable ways to define and delegate job responsibilities. Variations in staffing may also be expected between applicants with and without prior experience in nuclear plant design, construction, or operation. The reviewer must be convinced that an applicant has not underestimated the magnitude of the task. The reviewer should be alert to the possibility that excessive workloads may be placed upon too small a number of individuals. Interface arrangements and controls between the applicant and major contractors (NSSS vendors, architect/engineers, constructors) should be examined to ensure that the applicant will be in charge of and responsible for design and construction activities.

If the application involves the addition of more than one unit, the reviewer should ensure that headquarters staffing plans take this fact into account. This is particularly important if additional units are scheduled to come on line at intervals of about one year or less, since the shakedown period for the operation of a new plant can be expected to produce quite heavy workloads. In some of these cases the applicant may plan to bolster the plant staff organization during such periods so that it is necessary to evaluate headquarters staffing plans in conjunction with those for the plant staff organization.

C. The reviewer should assess the degree of participation during the design and construction phases by the headquarters group that typically has plant operating (generating) responsibility. Interfaces between such a group and those with project engineering responsibilities should be examined.

D. At the time of this review, if the applicant has had experience in the operation of a previously licensed nuclear power plant, the reviewer may seek independent information about headquarters staffing and qualifications through the appropriate NRC Regional Office.

The review procedure for this section consists, therefore, of the following:

1. An examination of the information submitted to determine that all areas identified in subsection I, ''Areas of Review,'' above have been addressed.
2. A comparison of the information with the acceptance criteria of subsection II, Review Criteria,'' above.
3. Review of information provided by the NRC Regional Office position statement on the applicant's organizational and administrative commitments made in the SAR, if applicable.
4. Verification of the implementation of the management structure and technical resources based on visits to corporate headquarters and the site, if applicable.

The reviewer then determines, based on the foregoing, the overall acceptability of the applicant's management and technical support organization and staffing plans.

For OL and late stage COL license transfer under 10 CFR Part 50, the existing organization was found acceptable for operations as part of the initial licensing review. Therefore, the review in support of a license transfer should be focused on the organizational changes proposed as a result of that transfer. The reviewer should ensure that the proposed changes will result in an organization that will continue to meet the relevant review criteria.

For Standard Design Certification under 10 CFR Part 52, the procedures above should be followed, as modified by the procedures in SRP Section 14.3, (DRAFT, April 1996) to verify that the design set forth in the standard safety analysis report, including inspections, tests, analysis, and acceptance criteria (ITAAC), site interface requirements and combined license action items, meet the acceptance criteria given in subsection II. SRP Section 14.3 (DRAFT, April 1996) contains procedures for the review of certified design material (CDM) for the standard design, including the site parameters, interface criteria, and ITAAC.

IV. Evaluation Findings

The reviewer verifies that the information presented supports conclusions of the following type to be used in the staff's safety evaluation report:

The staff concludes that the management and technical support organization is acceptable and meets the requirements of 10 CFR 50.40. This conclusion is based on the following:

A. For a Safety Evaluation Report of an Initial CP or COL or for a Transfer of CP or COL

The applicant has described clear responsibilities and associated resources for the design and construction of the facility and has described its plans for management of the project and for utilization of the NSSS vendor and A/E. These plans have been reviewed and give adequate assurance that an acceptable organization has been established and that sufficient resources are available to satisfy the applicant's commitments for the design and construction of the facility. These findings contribute to the judgment that the applicant complies with the requirements of 10 CFR 50.40(b) and 10 CFR 50.80, as applicable; i.e., that the applicant is technically qualified to engage in design and construction activities.

B. For a Safety Evaluation Report of an Initial OL or Late Stage COL

The applicant has described its organization for the management of, and its means for providing technical support for the plant staff during operation of the facility. These measures have been reviewed and it is concluded that the applicant has an acceptable organization and adequate resources to provide offsite technical support for the operation of the facility under both normal and off-normal conditions.

C. For a Safety Evaluation Report of a Transfer of an OL or Late Stage COL License

The applicant has described its organization for the management of, and its means for providing technical support to the plant staff for operation of the facility after the license transfer. These measures have been reviewed and it is concluded that the applicant has an acceptable organization and adequate resources to provide offsite technical support for the operation of the facility under both normal and off-normal conditions.

D. For Design Certification

For design certification reviews, the findings will also summarize, to the extent that the review is not discussed in other safety evaluation report sections, the staff's evaluation of inspections, tests, analyses, and acceptance criteria (ITAAC), including design acceptance criteria (DAC), site interface requirements, and combined license action items that are relevant to this SRP section.

In addition to the finding based on the type of application, the safety evaluation report should also address the following:

These findings contribute to the judgment that the applicant complies with the requirements of 10 CFR 50.40(b) and 10 CFR 50.80, as applicable (that the applicant is technically qualified to operate a nuclear power plant); that the applicant will have the necessary managerial and technical resources to provide assistance to the plant staff in the event of an emergency; and that the applicant has identified the organizational positions responsible for fire protection matters and the authorities that have been delegated to these positions to implement fire protection requirements.

V. Implementation

The following is intended to provide guidance to applicants and licensees regarding the NRC staff's plans for using this SRP section.

This SRP section will be used by the staff when performing safety evaluations of license applications submitted by applicants pursuant to 10 CFR 50 or 10 CFR 52 and for transfer of a license pursuant to 10 CFR 50.80. Except in those cases in which the applicant proposes an acceptable alternative method for complying with specified portions of the Commission's regulations, the method described herein will be used by the staff in its evaluation of conformance with Commission regulations.

The provisions of this SRP section apply to reviews of applications docketed six months or more after the date of issuance of this SRP section.

Implementation schedules for conformance to parts of the method discussed herein are contained in the referenced regulatory guides and NUREGs.

VI. References

1. 10 CFR Part 50, ''Domestic Licensing of Production and Utilization Facilities.''
2. Regulatory Guide 1.8, ''Qualification and Training of Personnel for Nuclear Power Plants.''
3. Regulatory Guide 1.68, ''Initial Test Programs for Water-Cooled Nuclear Power Plants.''
4. NUREG–0694, ''TMI-Related Requirements for New Operating Licenses.''
5. NUREG–0711, Human Factors Engineering Program Review Model.
6. NUREG–0718, ''Licensing Requirements for Pending Applications for Construction Permits and Manufacturing License.''
7. NUREG–0737, ''Clarification of TMI Action Plan Requirements.

NUREG–0800—Standard Review Plan, Chapter 13, Conduct of Operations

13.1.2–13.1.3 Operating Organization

Review Responsibilities

Primary—Human Performance Branch
Secondary—None

I. Areas of Review

The applicant's operating organization, as described in its safety analysis report (SAR), is reviewed. This section of the SAR should describe the structure, functions, and responsibilities of the onsite organization established to operate and maintain the plant.

A. Reviews of Initial Construction Permit (CP) and Early Stage Combined License (COL) or Reviews or Transfer of CP and Early Stage COL

During the early stages of construction or plant design it is recognized that many details of the plant organization and staffing have not been finalized. The organizational information provided at this time should include the following elements:

1. The applicant's commitment to meet the guidelines of Regulatory Guide 1.33 for the Operating Organization.
2. The applicant's commitment to meet the guidelines of Regulatory Guide 1.33 for Onsite Review and Rules of Practice.
3. The applicant's commitment to meet Branch Technical Position SPLB 9.5–1.
4. The applicant's commitment to meet the guidelines of Regulatory Guide 1.8 for the Operating Organization.
5. The applicant's commitment to be consistent with the options in the Commission Policy Statement on Engineering Expertise on Shift.
6. The applicant's commitment to meet TMI Action Plan items I.A.1.1 and I.A.1.3 of NUREG–0737 for Shift Technical Advisor and Shift Manning.
7. A schedule, relative to fuel loading for each unit, for filling all positions.

B. Review of Operating License (OL) and Later Stage Combined License (COL)

During the later stages of construction, plant design, and licensing, the applicant should provide evidence that the initial personnel selections conform to the commitments made in the early stages of licensing.

The organizational information provided by the applicant should include the following elements:

1. An organization chart should have the following elements:
   a. The title of each position,
   b. The minimum number of persons to be assigned to common or duplicated positions,
   c. The number of operating shift crews, and
   d. The positions for which reactor operator and senior reactor operator licenses are required.

For multi-unit stations, the organization chart (or additional charts) should clearly reflect changes and additions as new units are added to the station.

2. The personnel resumes for those selected for management and supervisory positions down through the shift supervisor.
3. The functions, responsibilities, and authorities of plant positions corresponding to the following should be described:
   a. Overall plant management.
   b. Operations supervision.
   c. Operating shift crew supervision.
   d. Shift technical advisors.
   e. Licensed operators.
   f. Non-licensed operators.
   g. Technical supervision.
   h. Radiation protection supervision.
   i. Instrumentation and controls maintenance supervision.
   j. Equipment maintenance supervision k. Fire protection supervision.
   l. Quality assurance supervisor (when part of the plant staff).

For each position, where applicable, required interfaces with offsite personnel or positions identified in SAR Section 13.1.1 should be described. Such interfaces include defined lines of reporting responsibilities, e.g., from the plant manager to the immediate

superior, as well as functional or communication channels.

4. The line of succession of authority and responsibility for overall station operation in the event of unexpected contingencies of a temporary nature, and the delegation of authority that may be granted to operating supervisors and to shift supervisors, including the authority to issue standing or special orders.

5. The extent and nature of the participation of the plant operating and technical staff in the initial test program.

6. If the station contains or is planned to contain power generating facilities other than those relating to the application in question and including fossil-fueled units, this section should also describe interfaces with the organizations operating such other facilities. The description should include any proposed sharing of persons between the units, a description of their duties, and the proportion of their time they will routinely be assigned to non-nuclear units

7. The position titles, applicable operator licensing requirements for each, and the total number of people planned to man each shift should be described for all combinations of units proposed to be at the station in either operating or cold shutdown modes. Shift crew staffing plans unique to refueling operations should be described. The proposed means of assigning shift responsibility for implementing the radiation protection and fire protection programs on a round-the-clock basis should also be described.

8. The education, training, and experience requirements (qualification requirements) established by the applicant for filling each management, operating, technical, and maintenance position category in the operating organization above should be described. This includes those persons who will conduct preoperational and startup tests. Consequently, the information to be reviewed should demonstrate an understanding of and commitment to the acceptance criteria below.

C. Review of a Transfer of Operating License (OL) or Late Stage Combined Operating License (COL)

The initial operating organization was found acceptable as part of the initial licensing review. Subsequent safety-related changes to the operating organization should have been evaluated with an appropriate methodology and, therefore, the existing organization remains acceptable. The review to support a license transfer should focus on evaluating any changes to the operating organization that are being proposed as a result of the transfer.

D. Review Interfaces

The primary Human Performance review branch performs the following reviews under the SRP sections indicated:

SRP Sections 13.1.1 through 13.1.3,—for organizational structure, personnel qualifications and experience

SRP Section 13.2.1—for training for licensed operators

SRP Section 13.4—for organizational provisions for independent reviews and verifications

SRP Section 13.5.2—for procedure adequacy

SRP Section 18.0—for use of human factors engineering principles

The primary Human Performance review branch will coordinate evaluations and reviews by other branches that interface with the overall review of the operating organization as follows:

1. With the branch responsible for Emergency Preparedness and Radiation Protection, as part of its primary review responsibility for SRP Section 13.3, for the acceptability of the emergency organization and as part of its primary review responsibilities for SRP Section 12.5, for the acceptability of the radiation protection organization.

2. With the branch responsible for Safeguards as part of its primary review responsibility for SRP Section 13.6 for the acceptability of the applicant's plans and provisions for security, including the security organization.

3. With the branch responsible for Quality Assurance, as part of its primary review responsibility for SRP Chapter 17, for the acceptability of the quality assurance organization.

For those areas of review identified above as being part of the review under other SRP sections, the acceptance criteria necessary for the review and their methods of application are contained in the referenced SRP sections.

II. Acceptance Criteria

A. General Criteria

This section of the SAR should demonstrate the applicant's commitment to and implementation of plans to staff the onsite operating organization and to define and delegate responsibilities to provide assurance that the plant can be operated safely.

In the review and evaluation of the subject matter in this section of the SAR, the following points should be taken into consideration:

1. Plant staff organizational structures are not rigidly fixed. However, experience has shown that certain components are common to and necessary for all plants. Among these are operational, onsite technical support, and maintenance groups, under the direction and supervision of a plant manager.

2. The operating organization should be free of ambiguous assignments of primary responsibility. Operating responsibilities should be reasonably well defined in both numbers and experience of persons required to implement their responsibilities.

3. The total on-shift manpower available should include a sufficient number of full operating shift crews so that excessive overtime is not routinely scheduled.

The staff acceptance criteria are designed to produce reasonable assurance of applicant compliance with the relevant requirements of the following regulations:

1. 10 CFR 50.40(b) as it relates to demonstrating in conjunction with other reviews that the applicant is technically qualified to engage in nuclear activities licensed under these regulations.

2. 10 CFR 50.54(j), (k), (l), and (m) as they relate to operator requirements during the operation of the facility, the responsibility for directing activities of licensed operators, and the senior operator availability during reactor operations and other specific reactor conditions or modes of operation.

3. 10 CFR 50.80 as it relates to demonstrating in conjunction with other reviews that the applicant for the transfer of a license is technically qualified to be the holder of a license.

B. Specific Criteria

Specific criteria necessary to meet the relevant requirements of 10 CFR 50.40(b), 10 CFR 50.80, and 10 CFR 50.54(j), (k), (l), and (m) as follows:

1. The requirements of ANSI N18.7/ANS–3.2, Section 3.4, ''Operating Organization,'' as endorsed by Regulatory Guide 1.33, should be met. In addition, the following characteristics should be satisfied:

a. The reporting responsibility and authority of the functional areas of radiation protection, quality assurance, and training should ensure independence from operating pressures. In utilities with large commitments to nuclear power plants, overall management and technical direction in these areas may be concentrated at the home office.

b. There should be clear lines of authority to the Plant Manager.

c. Responsibility for all activities important to the safe operation of the facility should be clearly defined.

d. Distinct functional areas should be separately supervised and/or managed.

e. Sufficient managerial depth should be available to provide qualified backup in the event of the absence of the incumbent.

2. Responsibilities and authorities of operating organization personnel should conform to the requirements of ANSI N18.7/ANS–3.2, Section 5.2, ''Rules of Practice''; Section 4.4, ''Onsite Review,'' as endorsed by Regulatory Guide 1.33; Branch Technical Position SPLB 9.5–1; and Regulatory Guide 1.8 for the ''Operating Organization.'' In addition, the organization should reflect the staff position in TMI Action Plan Item I.C.3 of NUREG–0694, by having the responsibilities of the shift supervisor clearly establish the command duties of that position and emphasize the primary management responsibility for the safe operation of the plant.

3. Assignments of onsite shift operating crews shall be made in accordance with 10 CFR 50.54(j), (k), (l), and (m). In addition, the staffing should reflect the staff positions of TMI Action Plan items I.A.1.1 and I.A.1.3 of NUREG–0737 as follows:

a. A shift supervisor with a senior reactor operator's license, who is also a member of the station supervisory staff, shall be onsite at all times when at least one unit is loaded with fuel.

b. In addition to the licensed personnel specified in 10 CFR 50.54(m), as a minimum, an auxiliary operator (non-licensed) shall be assigned to each reactor and an additional auxiliary operator shall be assigned for each control room from which a reactor is operating. These operators shall be properly qualified to support the unit to which assigned.

Note: The shift composition described above is shown in tabular form in Table 1.

c. To meet TMI Action Plan item I.A.1.1 of NUREG–0737, engineering expertise shall be onsite at all times a licensed nuclear unit is being operated in Modes 1–4 for a PWR or in Modes 1–3 for a BWR. This engineering expertise should be consistent with the options presented in the Commission Policy Statement on Engineering Expertise on Shift.

d. A health physics technician shall be onsite at all times when there is fuel in a reactor.

e. A rad/chem technician shall be onsite at all times when a licensed nuclear unit is being operated in Modes 1–4 for a PWR or in Modes 1–3 for a BWR.

f. Assignment, stationing, and relief of operators and senior operators within the control room shall be as described in Regulatory Guide 1.114.

4. Total complement of licensed personnel and unlicensed personnel for on-site shift operating crews should be sufficient to avoid the routine heavy use of overtime.

Note: SRP Section 13.5.1 contains guidance on work hour limitations.

To meet this policy, staffing plans should provide for no less than the number required for five shift rotations.

5. The plant operating and technical staff should be used to the maximum extent possible in the facility initial test program.

6. Assignments of persons to implement the fire brigade requirements of the fire protection program should meet the guideline of SRP Section 9.5.1, including the following:

a. The responsibilities of the fire brigade members under normal conditions should not conflict with their responsibilities during a fire emergency.

b. The minimum number of fire brigade members available onsite for each shift operation crew should be consistent with the activities required to combat the most significant fire. The minimum size of the fire brigade shift should be five persons unless a specific site evaluation has been completed and some other number justified.

7. Regulatory Guide 1.8, ''Qualification and Training of Personnel for Nuclear Power Plants,'' sets forth the staff position on plant personnel qualifications and training.

In addition, although the qualification levels of the standards are endorsed as acceptable minimums for each position, it is expected that the collective qualifications of the plant staff will be greater than the sum of the minimum individual requirements described in the standard, particularly in the area of nuclear power plant experience and in supervisory and management positions involved in the operational aspects of the facility. In those cases where the collective qualifications do not exceed the sum of the minimums for individual positions, additional technical support for the plant staff may be required. These will be determined on a case-by-case basis.

TABLE 1

	Shift Staffing**		
	One unit, one control room	Two units, one control room	Two units, two control rooms
One Unit Operating*	1 SS (SRO) 1 SRO 2 RO 2 AO	1 SS (SRO) 1 SRO 3 RO 3 AO	1 SS (SRO) 1 SRO 3 RO 3 AO
Two Units Operating*	NA	1 SS (SRO) 1 SRO 3 RO 3 AO	1SS (SRO) 2 SRO 4 RO 4 AO
All Units Shutdown	1 SS (SRO) 1 RO 1 AO	1 SS (SRO) 2 RO 3 AO	1 SS (SRO) 2 RO 3 AO
SS (SRO) 2 RO 3 AO.			

SS—Shift Supervisor.
SRO—Licensed Senior Reactor Operator.
RO—Licensed Reactor Operator.
AO—Auxiliary Operator.

Notes:

1. In order to operate or supervise the operation of more than one unit, an operator (SRO or RO) must hold an appropriate, current license for each such unit.
2. In addition to the staffing requirements indicated in the table, a licensed senior operator will be required to directly supervise any core alteration activity.

*Modes 1 through 4 for PWRs. Modes 1 through 3 for BWRs.

**Shift staffing of unlicensed personnel for special cases such as 3 units, operating from 1 or 2 control rooms, etc. will be determined on a case-by-case basis, based on the principles defined in item II.B.3. of this SRP section. Shift staffing of licensed personnel for special cases including temporary deviations and staffing for 3 units must meet the requirements of 10 CFR 50.54(m), however.

C. Technical Rationale

The technical rationale for application of these acceptance criteria to reviewing the operating organization is discussed in the following paragraphs:

1. Compliance with the relevant requirements of 10 CFR 50.40(b) requires that the applicant be technically qualified to engage in the proposed activities in accordance with the regulations in Chapter 50. Similarly, 10 CFR 50.80 requires that an applicant for the transfer of a license be technically qualified to be the holder of a license.

A review of the operating organization established by the applicant to oversee operation of a nuclear power plant provides valuable insight into corporate management's understanding of its safety role in the operation and maintenance of the facility. This information contributes to the determination that an applicant is technically qualified to engage in the proposed nuclear activities by ensuring that appropriate considerations were used in the establishment of general qualification requirements and staffing levels for all key positions on which the safety of the facility will depend.

Meeting the requirements of 10 CFR 50.40(b) and 10 CFR 50.80, as applicable, provides assurance that the applicant is technically qualified to engage in the proposed activities and has established the necessary management and technical support organization to safely operate the proposed facility.

2. Compliance with 10 CFR 50.54(j), (k), (l), and (m) requires the applicant to demonstrate that its operating organization satisfies minimum requirements for operator supervision and the availability of licensed senior operators and licensed operators during reactor operations and other specific reactor conditions or mode of operation.

These are key positions for ensuring the safe operation of the plant. A staffing review of the operating organization provides valuable insight regarding the determination that an applicant is technically qualified to operate the facility.

III. Review Procedures

Preparation for reviewing the SAR or license transfer applilcation should include familiarization with the documents listed as references to this SRP section.

Each element of the SAR or transfer application information is to be reviewed against this SRP section. The reviewer's judgement during the review is to be based on an inspection of the material presented, whether items of special safety significance are involved, and the uniqueness of the facility. Any exceptions or alternatives are to be carefully reviewed to ensure that they are clearly defined and that adequate basis exists for acceptance.

The applicant should identify the applicable version of references, Regulatory Guides, and Codes and standards used. The reviewer should identify the applicable version of references, regulatory guides, and Codes and standards used in the review.

In the review and evaluation of the information related to the operating organization, the following points should be taken into consideration:

A. During the early stages of construction or plant design, the applicant will generally not have made selections for plant staff positions. The review procedure, therefore, is to examine this section of the SAR for a commitment on the part of the applicant to conform to the stated acceptance criteria.

B. The reviewer must recognize that there are many acceptable ways to define and delegate job responsibilities. Variations in staffing may also be expected between applicants with and without prior experience in nuclear plant operation. It is important that the reviewer verify that applicants lacking in experience do not underestimate the magnitude of the task and that all applicants adequately consider the potential effects of human error. Guidance on human error considerations may be found in NUREG–0711, Chapter 7, ''Element 6—Human Reliability Analysis.'' The reviewer should be alert to the possibility that excessive workloads may be placed upon too small a number of individuals.

The reviewer should also consider that the structure of onsite technical support and maintenance groups may depend somewhat on headquarters staffing and the division of effort between onsite and offsite personnel.

C. During the later stages of construction, plant design, and licensing, the review consists first of the same examination as made for the early stages of construction or plant design, and secondly, of an analysis of each resume. The reviewer should make an explicit comparison of the educational and experience records obtained from each resume with the corresponding endorsed consensus standards requirements and regulatory positions set forth for the applicable position in Regulatory Guide 1.8 or other approved qualifications. ''Applicable experience'' should be judged in the light of the position responsibility. Credit for experience, which may not be entirely applicable, should be weighed to a degree commensurate with its applicability.

Where a clear comparison cannot be made between the proposed plant staff positions and those defined in the standards endorsed in Regulatory Guide 1.8, the applicant should list each position on its plant staff and designate the corresponding position of these standards, or describe in detail the proposed qualification requirements for each position on its plant staff.

In addition, if the applicant, as of the time the review takes place, has had experience in the operation of previously licensed nuclear power plants, the reviewer may seek independent information relative to plant staffing and qualifications through the appropriate Regional Office, e.g., by discussion with inspection personnel or review of inspection reports.

D. For onshift persons, the total manpower available should be reviewed to ensure that a sufficient number of full operating shift crews are planned so that excessive overtime is not routinely scheduled for these crews. Additional staffing guidance may be found in NUREG–0711, Chapter 6, ''Element 5—Staffing.'' For multi-unit sites, overall site responsibilities should be checked for clarity during those periods of time when senior level supervision is not onsite.

The review procedure for this SRP section consists, therefore, of the following:

1. An examination of the information submitted to determine that all subject

matter identified in subsection I, ''Areas of Review,'' above has been addressed.

2. A comparison of the information with the acceptance criteria of subsection II, ''Acceptance Criteria,'' above.

3. Review of information provided by the NRC Regional Office position statement on the applicant's organizational and administrative commitments made in the SAR, as appropriate.

4. Verification of the implementation of the management structure and technical resources based on visits to corporate headquarters and the site, as appropriate.

The reviewer then determines, based upon the foregoing, the overall acceptability of the applicant's operating organizations and plant staffing plans.

For transfer of an operating license or late stage COL under 10 CFR Part 50.80, the operating organization was found acceptable as part of the initial licensing of the plant. Subsequent changes to the operating organization should have been made in accordance with an appropriate evaluation methodology. Therefore, the existing organization should still be acceptable. The review for license transfer should be focused on the changes that are proposed to the operating organization as a result of the transfer.

For standard design certification reviews under 10 CFR Part 52, the procedures above should be followed, as modified by the procedures in SRP Section 14.3, to verify that the design set forth in the standard safety analysis report, including inspections, tests, analysis, and acceptance criteria (ITAAC), site interface requirements and combined license action items, meet the acceptance criteria given in subsection II, ''Acceptance Criteria.'' SRP Section 14.3 contains procedures for the review of certified design material (CDM) for the standard design, including the site parameters, interface criteria, and ITAAC.

IV. Evaluation Findings

The reviewer verifies that the information presented and its review support conclusions of the following type to be used in the staff's safety evaluation report:

For a Safety Evaluation Report on an Initial CP or early stage COL or for Transfer of a CP or early stage COL

The staff concludes that the applicant's operating organization is acceptable and meets the relevant requirements of 10 CFR 50.40(b), 10 CFR 50.80, as applicable, and 10 CFR 50.54(j) through (m). This conclusion is based on the following:

The applicant has described the assignment of plant operating responsibilities; the reporting chain up through the chief executive office of the applicant; the proposed size of the regular plant staff; the functions and responsibilities of each major plant staff group; and the proposed shift crew complement for single unit or multiple unit operation; the qualification requirements for members of its plant staff; and (personnel resumes for management and principal supervisory and technical positions as submitted during the later stages of construction, plant design, and licensing). This information has been reviewed, and it is the conclusion of the staff that the proposed operating organization is acceptable.

The applicant's operating organization is characterized as follows:

1. The applicant is technically qualified as specified in 10 CFR 50.40(b) and 10 CFR 50.80, as applicable;

2. An adequate number of licensed operators will be available at all required times to satisfy the minimum staffing requirements of 10 CFR 50.54(j) through (m);

3. Onshift personnel are able to provide initial facility response in the event of an emergency;

4. Organizational requirements for the plant manager and radiation protection manager have been satisfied;

5. Qualification requirements and qualifications of plant personnel conform with the guidance of Regulatory Guide 1.8; and

6. Organizational requirements conform with the guidance of Regulatory Guide 1.33.

In addition, the applicant has complied with TMI Action Plan items I.A.1.1 and I.A.1.3.

For a Safety Evaluation Report on a transfer of an OL or Late Stage COL, the findings will summarize the staff's evaluation of the applicant's proposed changes to the operating organization.

For design certification reviews, the findings will also summarize, to the extent that the review is not discussed in other safety evaluation report sections, the staff's evaluation of inspections, tests, analyses, and acceptance criteria (ITAAC), including design acceptance criteria (DAC), site interface requirements, and combined license action items that are relevant to this SRP section.

V. Implementation

The following is intended to provide guidance to applicants and licensees regarding the NRC staff's plans for using this SRP section.

This SRP section will be used by the staff when performing safety evaluations of license applications or license transfer applications submitted by applicants pursuant to 10 CFR parts 50 or 52. Except in those cases in which the applicant proposes an acceptable alternative method for complying with specified portions of the Commission's regulations, the method described herein will be used by the staff in its evaluation of conformance with Commission regulations.

The provisions of this SRP section apply to reviews of applications docketed six months or more after the date of issuance of this SRP section.

Implementation schedules for conformance to parts of the method discussed herein are contained in the referenced guides and NUREGs.

VI. References

1. 10 CFR Part 50, ''Domestic Licensing of Production and Utilization Facilities.''
2. Regulatory Guide 1.8, ''Qualification and Training of Personnel for Nuclear Power Plants.''
3. Regulatory Guide 1.33, ''Quality Assurance Program Requirements (Operation).'' (endorses ANSI N18.7–1976/ANS–3.2, ''Administrative Controls and Quality Assurance for the Operational Phase of Nuclear Power Plants,'' as supplemented by its regulatory positions)
4. Regulatory Guide 1.114, ''Guidance to Operators at the Controls and to Senior Operators in the Control Room of a Nuclear Power Unit.''
5. NUREG–0694, ''TMI-Related Requirements for Operating Licenses.''
6. NUREG–0711, ''Human Factors. Engineering Program Review Mode.
7. NUREG–0737, ''Clarification of TMI Action Plan Requirements.''
8. The Commission Policy Statement on Engineering Expertise on Shift (50 FR 43621).

Dated Rockville, Maryland, this 27th day of May, 1999.

For the Nuclear Regulatory Commission.

Robert M. Gallo,

Chief, Operator Licensing, Human Performance and Plant Support Branch, Division of Inspection Program Management.

[FR Doc. 99–14050 Filed 6–2–99; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

[Docket No. MC99–1; Order No. 1247]

Mail Classification Case

AGENCY: Postal Rate Commission.

ACTION: Initiation of new mail classification docket.

SUMMARY: The Commission announces a formal mail classification docket to consider expansion of the legal definition of bulk parcel return service (BPRS). It also authorizes settlement negotiations based on a stipulation and agreement, request comments on expedited treatment, and issues other procedural rulings. These actions will allow the proposed expansion of BPRS eligibility to be addressed.

DATES: The deadline for intervention, comments on expedited treatment, and hearing requests is June 21, 1999; the prehearing conference is June 24, 1999. See **SUPPLEMENTARY INFORMATION** for other dates.

ADDRESSES: Address all communications regarding this notice to the attention of Margaret P. Crenshaw, Secretary of the Commission, 1333 H Street NW., Suite 300, Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 1333 H Street NW., Suite 300, Washington, DC 20268–0001.

SUPPLEMENTARY INFORMATION: On May 25, 1999, the Postal Service filed a request for a recommended decision approving a classification change expanding the terms on which it offers Bulk Parcel Return Service (BPRS). (Docket No. MC99–4, Bulk Parcel Return Service Expedited Minor Classification Case.) The request invokes expedited review under Commission rules for cases involving minor classification changes. *See* 39 CFR 3001.69–69c. The Service notes that these rules require that notices of intervention, responses to proposed treatment under the expedited rules, and requests for a hearing be submitted within 26 days of the filing, or no later than June 21, 1999 in this proceeding. May 25, 1999 Notice of United States Postal Service of the Filing of a Request for an Expedited Recommended Decision on a Minor Classification Change for BPRS.

Contents of the filing. The request was accompanied by the testimony of two Postal Service witnesses (Adra and Eggleston), proposed amendments to the Domestic Mail Classification Schedule (DMCS), and an explanation of why the proposal is a minor change qualifying for expedited treatment. It also includes a statement regarding compliance with other procedural rules and a proposed stipulation and agreement. The Service says it filed the stipulation and agreement to encourage parties to consider expeditious resolution of this case. May 25, 1999 Notice of United States Postal Service Filing of Proposed Stipulation and Agreement.

Limitations of current legal definition of BPRS. The Service's filing notes that as currently defined, BPRS provides a method for high-volume mailers to have parcels that are undeliverable-as-addressed (UAA)—and therefore unopened—returned to designated postal facilities at the original mailer's expense. To qualify for this service, UAA parcels must have been initially mailed under the Regular or Nonprofit subclasses of Standard (A) Mail. They must also be machinable (under one pound), carry a designated BPRS endorsement, and meet other Postal Service requirements. The BPRS fee is $1.75 for each returned piece.

Proposed expansion of the definition. The Service's proposal expands the definition of BPRS to include qualifying parcels that are successfully delivered (and therefore not UAA), but then opened, resealed and redeposited in the mailstream by the recipient for return to the original mailer. The expanded definition recognizes two situations. One is when a qualifying parcel is returned using a mailer-supplied BPRS return label. The other is when a qualifying parcel is returned with neither a mailer-supplied BPRS label nor customer-affixed postage, and it is impracticable or inefficient for the Service to return the mail piece to the recipient for payment of applicable postage. In both situations, the Service proposes allowing qualifying parcels to be handled as BPRS, with the original mailer paying the $1.75 BPRS fee for each returned parcel.

In support of its proposal, the Service asserts that the requested change will further the general policies of efficient postal operations and reasonable rates and fees enunciated in the Postal Reorganization Act. Id. at 2 (citing 39 U.S.C. 101(a), 403(a), and 403(b)). It also states that the change conforms to the classification criteria of 39 U.S.C. 3623(c). Request at 2. The Service maintains that the proposed change does not have any rate, fee or measurable total cost change implication. Id., Attachment C–10.

Expedited review. Under rules 69–69c, requests for expedited consideration of a classification change characterized as minor must include a description of the proposed change, along with proposed changes in the DMCS and any pertinent rate schedules; a thorough explanation of the reasons why the Service characterizes the change as minor; and an estimate of the overall impact of the change on postal costs, and revenues, mail users, and competitors. The Service states that witness Adra provides the required description of the proposed classification change, notes that the proposed DMCS changes are provided in Attachment A to its request, and asserts that no rate or fee schedule changes are proposed. It also states that witnesses Adra and Eggleston address the Service's rationale for characterizing the requested change as minor in character. Id. at C–12.

Testimony of witness Adra. Witness Adra provides an overview of the existing BPRS offering and discusses the Service's rationale for proposing the requested changes. He also reviews the proposal's consistency with classification criteria, describes why the case should be considered under the expedited rules, and identifies the proposal's financial impact. His discussion includes this observation about problems encountered under existing circumstances:

> If a customer receives a BPRS-endorsed mailpiece, opens it, then decides to return it, the customer should bring it to a post office and pay single-piece postage for return. If a customer drops an opened parcel in the mail without paying postage, the mailpiece should be returned to the customer and return postage collected. In reality, however, it is often more practicable or efficient for the Postal Service to return it to the original mailer together with the mailer's other BPRS parcels, with the return fee paid by that mailer. This is because: (1) it is inefficient for the Postal Service to incur the expense and difficulty of having the carrier return the parcel to the customer and seek payment of postage; or (2) it is not possible to tell that the parcel was opened; or (3) the fact that the parcel was opened is not discovered until the parcel is at or near the original mailer's delivery office. Another potential problem for customers is that the parcel may not always make it back to the original mailer. Depending on its condition, a parcel could be treated as dead mail and sent to a mail recovery center. Meanwhile, customers assume that their merchandise was returned and their account was credited.

USPS–T–1 at 3.

Testimony of witness Eggleston. Witness Eggleston identifies relevant costing issues, discusses anticipated handling of qualifying parcels in terms of the cost components in a previous BPRS cost study, and concludes that there are no additional costs associated with extending the definition of BPRS to include opened and resealed parcels. USPS–T–2 at 2–6. Moreover, she asserts that when these opened and resealed parcels carry a label, they will be less costly for the Postal Service to process. Id. at 6.

Proposed DMCS changes. The proposed amendments to the DMCS include revisions to existing sections 935.11 (the definition of BPRS) and 935.62 (permit cancellation terms). They also include the addition of a new

section 935.36 describing the mailer-supplied return label option. The amendments are set out in attachments to the Service's request and the proposed stipulation and agreement.

Proposed stipulation and agreement. The Service has submitted a proposed stipulation and agreement to encourage parties to consider expeditious resolution of this case. Part I (Background) provides a brief statement identifying the docket, filing date, and supporting testimony. Part II (Terms and Conditions) consists of 10 numbered paragraphs addressing matters such as the evidentiary record, consistency of the proposed agreement with applicable postal policies and mail classification criteria, and the extent to which signatories are bound by the agreement.

Satisfaction of criteria for treatment as an expedited minor classification case. Witness Adra asserts that the proposal qualifies as an expedited minor classification change under applicable criteria because it does not entail any fee changes for BPRS and does not impose any additional restriction of eligibility. He asserts that the proposal does not significantly change the estimated institutional cost contribution of BPRS. He further states that the proposed change does not entail any measurable financial impact because of the small number of BPRS participants, the lack of any change in the BPRS fee, and the lack of additional costs anticipated from this classification change. Finally, Adra says the Service does not foresee any adverse impact from this proposal on mail users and competitors, and considers it beneficial for both mailers and recipients. In particular, he says the Service does not anticipate any impact on competitors, since the parcels affected have already been entered into the postal system. Id. at 7.

Intervention. Anyone wishing to be heard in this proceeding is directed to file a notice of intervention with Margaret P. Crenshaw, Secretary of the Commission, 1333 H Street NW, Suite 300, Washington, DC 20268–0001 no later than June 21, 1999. Notices should indicate whether an intervenor will participate on a full or limited basis. *See* 39 CFR 3001.20 and 3001.20a.

Comments on proposed expedited treatment and requests for a hearing. Persons wishing to comment on the appropriateness of considering this request under the expedited rules for minor classification cases are directed to file comments no later than June 21, 1999. Requests for a hearing shall also be filed no later than June 21, 1999.

Prehearing conference; appointment of Postal Service as settlement coordinator. A prehearing conference will be held on Thursday, June 24, 1999 at 9:30 a.m. in the Commission's hearing room. The Commission asks that attendees be prepared to discuss not only the request for expedited treatment and their interest in a hearing, but also the status of discussions on the proposed stipulation and agreement the Postal Service has usefully provided with its initial filing. To facilitate discussion of this document, the Commission (on its own motion) authorizes settlement discussions in this proceeding, appoints the Postal Service as settlement coordinator, and requests that the coordinator provide a status report at (or before) the prehearing conference.

Representation of the general public. In conformance with section 3624(a) of title 39, U.S. Code, the Commission designates Ted P. Gerarden, director of the Commission's Office of the Consumer Advocate, to represent the interests of the general public in both proceedings. Pursuant to this designation, Mr. Gerarden will direct the activities of Commission personnel assigned to assist him and, upon request, supply their names for the record. Neither Mr. Gerarden nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding. The OCA shall be separately served with three copies of all filings, in addition to and at the same time as service on the Commission of the 24 copies required in section 10(c) of the Commission's rules of practice (39 CFR 3001.10(c)).

It is ordered:

1. Docket No. MC99–4 is established to consider the Service's request for a change in Bulk Parcel Return Service.

2. The Commission will sit en banc in this proceeding.

3. Notices of intervention in this case shall be filed no later than June 21, 1999.

4. Ted P. Gerarden, Director of the Commission's Office of the Consumer Advocate, is designated to represent the interests of the general public in this case.

5. Comments on the appropriateness of the considering the Service's Docket No. MC99–4 request under Commission rules 69–69c allowing for expedited treatment of minor classification cases shall be filed no later than June 21, 1999.

6. Requests for a hearing shall be filed no later than June 21, 1999.

7. A prehearing conference is scheduled for 9:30 a.m. on Thursday, June 24, 1999 in the Commission's hearing room.

8. The Commission authorizes settlement discussions in this proceeding, and appoints the Postal Service as settlement coordinator.

9. The settlement coordinator shall present a status report at (or before) the June 24, 1999 prehearing conference.

10. The Secretary of the Commission shall arrange for publication of this order in the **Federal Register** in a manner consistent with applicable requirements.

Authority: 39 U.S.C. 3623.

Dated: May 27, 1999.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 99–14001 Filed 6–2–99; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (SoftNet Systems, Inc., Common Stock, $.01 Par Value Per Share) File No. 1–5270

May 27, 1999.

SoftNet Systems, Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'') and rule 12d2–2(d) promulgated thereunder, to withdraw the security specified above (''Security'') from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Security has been listed for trading on the Amex and on April 14, 1999, became designated for quotation on the Nasdaq National Market (''Nasdaq'').

The Company, whose primary business relates to technology, has told the Amex that it believes its shareholders would be better served if the Security was trading exclusively on the Nasdaq, which, in the opinion of the Company, is the preferred marketplace for the securities of growth companies in the technology industry.

The Company has complied with the rules of the Amex by filing with the Exchange a certified copy of the resolutions adopted by the Board of Directors of the Company authorizing the withdrawal of the Security from listing on the Amex and by setting forth in detail to the Exchange the reasons for such proposed withdrawal, and the facts in support thereof.

The Amex has informed the Company of its determination not to interpose any objection to the Company's application

to withdraw its Security from listing and registration on the Exchange.

The Company's application relates solely to the withdrawal from listing of the Company's Security on the Amex and shall have no effect upon the continued designation of the Security for quotation on the Nasdaq. By reason of section 12(g) of the Act and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports under section 13 of the Act with the Commission.

Any interested person may, on or before June 17, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–14051 Filed 6–2–99; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3186]

State of Iowa

As a result of the President's major disaster declaration on May 21, 1999, I find that Black Hawk, Bremer, Buchanan, Clayton, Delaware, Dubuque, Fayette, Harrison, Jones, and Linn Counties in the State of Iowa constitute a disaster area due to damages caused by severe storms, flooding, and tornadoes beginning on May 16, 1999 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 19, 1999, and for loans for economic injury until the close of business on February 22, 2000 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Allamakee, Benton, Butler, Cedar, Chickasaw, Clinton, Crawford, Floyd, Grundy, Iowa, Jackson, Johnson, Monona, Pottawattamie, Shelby, Tama, and Winneshiek Counties in Iowa; Crawford and Grant Counties in Wisconsin; Jo Daviess County, Illinois; and Burt and Washington Counties in Nebraska.

The interest rates are:

	Percent
Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	6.875
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.437
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	7.000
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL COOPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The number assigned to this disaster for physical damage is 318606. For economic injury the numbers are 9C9200 for Iowa, 9C9300 for Wisconsin, 9C9400 for Illinois, and 9C9500 for Nebraska.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 25, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–14011 Filed 6–2–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3174]

State of Missouri (Amendment #2)

In accordance with a notice received from the Federal Emergency Management Agency dated May 19, 1999, the above-numbered Declaration is hereby amended to include Cole County, Missouri as a disaster area as a result of damages caused by severe storms and flooding beginning on April 3 and continuing through April 14, 1999.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Boone and Moniteau in the State of Missouri may be filed until the specified date at the previously designated location.

All other information remains the same, i.e., the deadline for filing applications for physical damage is June 18, 1999, and for economic injury the deadline is January 20, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 25, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–14008 Filed 6–2–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3183]

State of Tennessee (Amendment #1)

In accordance with information received from the Federal Emergency Management Agency dated May 19 and 20, 1999, the above-numbered Declaration is hereby amended to include Sumner County, Tennessee as a disaster area as a result of damages caused by severe storms, tornadoes, and flooding. This Declaration is further amended to establish the incident period for this disaster as beginning on May 5 and continuing through May 19, 1999.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Macon and Trousdale Counties in Tennessee, and Allen and Simpson Counties in Kentucky.

All other information remains the same, i.e., the deadline for filing applications for physical damage is July 10, 1999, and for economic injury the deadline is February 14, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 25, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–14009 Filed 6–2–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3182]

State of Texas (Amendment #2)

In accordance with a notice received from the Federal Emergency Management Agency dated May 21,

1999, the above-numbered Declaration is hereby amended to include Titus County, Texas as a disaster area as a result of damages caused by severe storms and tornadoes that occurred on May 4, 1999.

In addition, applications for economic injury loans from small businesses located in the contiguous county of Camp in the State of Texas may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary county and not listed herein have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is July 4, 1999, and for economic injury the deadline is February 7, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 25, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–14010 Filed 6–2–99; 8:45 am]

BILLING CODE 8025–01–P

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as Amended by Public Law 104–13; Proposed Collection, Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Proposed collection; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Wilma H. McCauley, Tennessee Valley Authority, 1101 Market Street (WR 4Q), Chattanooga, Tennessee 37402–2801; (423) 751–2523.

Comments should be sent to the Agency Clearance Officer no later than August 2, 1999.

SUPPLEMENTARY INFORMATION:

Type of Request: Regular submission.

Title of Information Collection: Foreign Line Crossing Data.

Frequency of Use: On Occasion.

Type of Affected Public: State or local governments, small businesses or organizations, businesses or other for-profit.

Small Businesses or Organizations Affected: Yes.

Federal Budget Functional Category Code: 271.

Estimated Number of Annual Responses: 100.

Estimated Total Annual Burden Hours: 1000.

Estimated Average Burden Hours Per Response: 10.

Need For and Use of Information: When a company wishes to build a line over or under a power transmission line owned by TVA, TVA must review certain engineering data to ensure reliability of the power system and to protect the public by ensuring that the crossing meets the National Electrical Safety Code. The information collection provides such engineering data.

William S. Moore,

Senior Manager, Administrative Services.

[FR Doc. 99–13997 Filed 6–2–99; 8:45 am]

BILLING CODE 8120–08–P

TENNESSEE VALLEY AUTHORITY

Environmental Impact Statement for Addition of Electric Generation Peaking and Baseload Capacity at Greenfield Sites, Haywood County, Tennessee

AGENCY: Tennessee Valley Authority.

ACTION: Notice of intent.

SUMMARY: The Tennessee Valley Authority (TVA) will prepare an environmental impact statement (EIS) for the proposed construction and operation of natural gas fired generating plants in Haywood County, Tennessee. The plants would supply peaking and/or baseload capacity to the TVA electric generation system to meet growing power demands. The EIS will evaluate the potential environmental impacts of constructing and operating both simple cycle and combined cycle combustion turbine plants. The plants would be built on previously undeveloped, greenfield site. TVA wants to use the EIS process to obtain public involvement on this proposal. Public comment is invited concerning both the scope of the EIS and environmental issues that should be addressed as a part of this EIS.

DATES: Comments on the scope and environmental issues for the EIS must be postmarked or e-mailed no later than July 6, 1999, to ensure consideration. Late comments will receive every consideration possible.

ADDRESSES: Written comments should be sent to Greg Askew, P.E., Senior Specialist, National Environmental Policy Act, Tennessee Valley Authority, Mail stop WT 8C, 400 West Summit Hill Drive, Knoxville, Tennessee 37902–1499. Comments may be e-mailed to gaskew@tva.gov.

FOR FURTHER INFORMATION CONTACT: Roy V. Carter, P.E., EIS Project Manager, Environmental Research Center, Tennessee Valley Authority, mail stop CEB 4C, Muscle Shoals, Alabama 35662–1010. E-mail may be sent to rvcarter@tva.gov.

SUPPLEMENTARY INFORMATION:

Project Description

TVA proposes to construct and operate one or more electric power plants on a greenfield site as early as June 2001. The proposed plants would be simple cycle or combined cycle natural gas fired combustion turbine plants for peaking or baseload operation respectively. The generation capacity of a single plant would be up to approximately 700 megawatt (MW) for a simple cycle peaking plant, 1,000 MW for a simple cycle plant after conversion to combined cycle technology, and 1,500 MW for a new combined cycle plant. Certain combinations of two plants at a single site would result in a total of 1,400 MW of peaking capacity, or 700 MW peaking and 1,000 MW baseload for a total capacity of 1,700 MW.

Three candidate greenfield sites have been identified in Haywood County, Tennessee. Candidate sites were identified through a detailed screening process that considered: (1) TVA's transmission system capacity at the locale; (2) reliable and economical long-term supply of natural gas; (3) engineering suitability of the site; (4) compatibility with surrounding land use; and (5) environmental factors including wetlands, floodplains, water supply, water quality, air quality, and historic and archaeological resources.

Peaking Plant

A typical peaking plant would consist of several simple cycle combustion turbines such as the General Electric Model GE 7FA with a rated net power output of 170 MW. These turbines would be fired with natural gas as the primary fuel and low sulfur fuel oil as the secondary fuel. These combustion turbines would employ dry low-nitrogen oxides (NOx) combustion chambers and water injection for NOx control when firing fuel oil.

The proposed sites would be located near both TVA power transmission lines (161 kilovolt (kV) or 500 kV) and adequate natural gas service to

minimize the lengths and therefore cost of these interconnections. Each plant would require a site area of approximately 35 to 40 acres.

Other appurtenances and ancillary equipment would include step-up transformers for 161 kV or 500 kV service, transmission line interconnection, natural gas pipeline connection and metering, demineralized water supply for the water injection nitrogen oxides control systems, fuel oil storage tank(s), and control and maintenance support buildings.

Baseload Plant

A typical baseload plant could consist of one or more combustion turbines such as the General Electric Model GE 7FA with a rated net power output of 170 MW. One or more heat recovery steam generators (HRSGs) would be used to generate steam from the turbine exhaust gases waste heat. The HRSGs may also have direct firing of natural gas to supplement the exhaust heat input. The resulting steam flow is then passed through a steam turbine(s) which operates a generator(s) to produce additional electric power. With the addition of these components, a peaking plant may be converted to a combined cycle plant for baseload operation.

Additional ancillary equipment beyond that required for a peaking plant would include cooling towers that supply cooling water for steam condensers. These cooling towers require a consequential source of water to makeup for both evaporative losses and the blowdown necessary to maintain water quality in the cooling tower. As a result, there would be on-site and/or off-site wells developed or an intake pumping station constructed in a large stream to supply the water. In both cases, a water pipeline would be constructed to connect the water supply with the plant. The cooling tower blowdown is a heated wastewater with a high dissolved solids content requiring treatment and/or disposal. Typical practice would be to construct a pipeline to a receiving stream having the capacity to assimilate the wastewater. An alternative would be to treat the blowdown on-site and recycle the water as cooling tower makeup water. This option would require construction of an on-site treatment facility and disposal of resulting sludge. Additionally, a water treatment facility would be required to supply demineralized water for various plant uses.

TVA's Integrated Resource Plan and the Need for Power

This EIS will tier from TVA's *Energy Vision 2020: An Integrated Resource Plan and Final Programmatic Environmental Impact Statement. Energy Vision 2020* was completed in December 1995 and a Record of Decision issued on February 28, 1996 (61 FR 7572). Energy Vision 2020 analyzed a full range of supply-side and demand-side options to meet customer energy needs for the period 1995 to 2020. These options were ranked using several criteria including environmental performance. Favorable options were formulated into strategies. A group of options drawn from several effective strategies was chosen as TVA's preferred alternative. The supply-side options selected to meet peaking and baseload capacity needs through the 2005 period included: (1) Addition of simple cycle or combined cycle combustion turbines to TVA's generation system, (2) purchase of call options for peaking or baseload capacity, and (3) market purchases of peaking or baseload capacity. The short-term action plan of Energy Vision 2020 identified a need for 3,000 MW of baseload and peaking additions through the year 2002. This is in addition to the baseload capacity additions of the successful completion of Watts Bar Nuclear Plant Unit 1 and the return to service of Browns Ferry Nuclear Plant Unit 3.

Each year TVA provides updated projections of supply and demand for the TVA sub-region of the Southeastern Electric Reliability Council. This is for the U.S. Department of Energy's annual report EIA–411. This year's report shows expected peak demands growing at 2.2 percent from 1999 to 2003 and beyond. The net capacity resources needed to meet the growth in demand increases 2,000 megawatts by year 2001, and 3,400 megawatts by year 2003. (See line item 13 on Table—Item 2.1 Projected Capacity and Demand—Summer of the EIA–411 report.) The addition of the combustion turbines is needed by TVA to meet the peaking capacity requirements from both the reliability and cost standpoint. Baseload capacity is not expected to be needed until 2004 or 2005.

Since 1995 additional power needs have been met or will be met in the following ways: (1) Continuing modernization of existing TVA hydroelectric plants (both conventional and pumped storage) will add approximately 388 MW of peaking capacity through 2002; (2) the Red Hills Power Project, a 440 MW lignite coal fired plant will begin commercial baseload operation in 2001 (TVA Record of Decision, 63 FR 44944); (3) 680 MW of simple cycle combustion turbines are proposed for the TVA Johnsonville, Colbert and Gallatin Fossil Plants with commercial operation as early as June 2000 (Final EIS Notice of Availability, 64 FR 27782); (4) various power purchase agreements in effect over this period; (5) demand side customer service programs continue to be implemented through TVA power distributors with an estimated 154 MW of capacity added from 1995 through 1999 and an additional 264 MW from 2000 through 2002; (6) distributed generation initiatives are being pursued by TVA and include operation of the 14 MW emergency diesel generators at the unfinished Bellefonte Nuclear Power Plant site; and (7) a Green Power Program that would begin in 2000 as a market test with several MW of capacity. Technologies for this program may include landfill gas, photovoltiacs, and wind.

Because Energy Vision 2020 identified and evaluated alternative supply-side and demand-side energy resources and technologies for meeting peak and baseload capacity needs, this EIS will not reevaluate those alternatives. This EIS will focus on the site-specific impacts of constructing and operating simple cycle combustion turbines and combined cycle plants at several candidate sites.

Proposed Issues To Be Addressed

The EIS will describe the existing environmental and socioeconomic resources at and in the vicinity of each candidate site that would be affected by construction and operation of a power plant. TVA's evaluation of environmental impacts to these resources will include, but not necessarily be limited to the potential impacts on air quality, water quality, aquatic and terrestrial ecology, endangered and threatened species, wetlands, aesthetics and visual resources, noise, land use, historic and archaeological resources, and socioeconomic resources.

Alternatives

The results of evaluating the potential environmental impacts and other important issues identified in the scoping process together with engineering and economic considerations will be used by TVA in selecting a preferred alternative. At this time, TVA has identified the following alternatives for detailed evaluation: (1) Construct and operate simple cycle combustion turbine peaking plants at

one of the candidate sites as early as June 2001 with and without future conversion to a combined cycle plant, (2) construct and operate a combined cycle baseload plant at the candidate site, (3) construct and operate both peaking and baseload plants at the candidate site, and (4) no action.

Scoping Process

Scoping, which is integral to the NEPA process, is a procedure that solicits public input to the EIS process to ensure that: (1) Issues are identified early and properly studied; (2) issues of little significance do not consume substantial time and effort; (3) the draft EIS is thorough and balanced; and (4) delays caused by an inadequate EIS are avoided. TVA's NEPA procedures require that the scoping process commence soon after a decision has been reached to prepare an EIS in order to provide an early and open process for determining the scope and for identifying the significant issues related to a proposed action. The scope of issues to be addressed in the draft EIS will be determined, in part, from written comments submitted by mail or e-mail, and comments presented orally or in writing at public meetings. The preliminary identification in this notice of reasonable alternatives and environmental issues is not meant to be exhaustive or final.

The scoping process will include both interagency and public scoping. The public is invited to submit written comments or e-mail comments on the scope of this EIS no later than the date given under the **DATES** section of this notice.

TVA conducted a public scoping meeting in Brownsville, Tennessee on April 19th. Brownsville is the county seat of Haywood County where the three candidate sites are being considered. At this meeting, using an open house format, TVA management and project staff presented overviews of the EIS process and the proposed power plant project, and answered questions and solicited comments on the issues that the public would like addressed in the EIS. This meeting was publicized through notices in local newspapers, by TVA press release, and in meetings between TVA officials and local elected officials preceding the public meetings. Approximately 25 persons attended this meeting.

The agencies to be included in the interagency scoping are U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, Tennessee Department of Environment and Conservation, the Tennessee State Historic Preservation Officer, and other agencies as appropriate.

After consideration of the scoping comments, TVA will further develop alternatives and environmental issues to be addressed in the EIS. Following analysis of the environmental consequences of each alternative, TVA will prepare a draft EIS for public review and comment. Notice of availability of the draft EIS will be published by the Environmental Protection Agency in the **Federal Register**. TVA will solicit written comments on the draft EIS, and information about possible public meetings to comment on the draft EIS will be announced. TVA expects to release a draft EIS by December 1999 and a final EIS by June 2000.

Dated: May 25, 1999.

Ruben O. Hernandez,

Vice President, Resource Stewardship.

[FR Doc. 99–13747 Filed 6–2–99; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5635]

Receipt of Petition for Decision That Nonconforming 1993–1998 BMW K1100 and K1200 Motorcycles Are Eligible for Importation; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Correction to notice of receipt of petition for decision that nonconforming 1993–1998 BMW K1100 and K1200 motorcycles are eligible for importation.

SUMMARY: This document corrects a notice published Monday, April 19, 1999 (64 FR 19212) announcing receipt by NHTSA of a petition for a decision that 1993–1998 BMW K1100 and K1200 motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States. The notice incorrectly identified the docket number for this petition as ''Docket No. NHTSA–99–5402.'' The docket number should have been properly identified as ''Docket No. NHTSA–99–5635.'' Those intending to comment on the petition should ensure that they reference the correct docket number in their comments.

Authority: 49 U.S.C. 30141(a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on May 28, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–14088 Filed 6–2–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5733]

Notice ofReceipt of Petition for Decision That Nonconforming 1995–1998 Toyota Avalon Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1995–1998 Toyota Avalon passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1995–1998 Toyota Avalon passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is July 6, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590 (Docket hours are from 9 am to 5 pm).

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of

the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Motors of Baltimore, Maryland (''J.K.'') (Registered Importer 90–006) has petitioned NHTSA to decide whether non-U.S. certified 1995–1998 Toyota Avalon passenger cars are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 1995–1998 Toyota Avalon passenger cars that were manufactured for sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1995–1998 Toyota Avalon passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 1995–1998 Toyota Avalon passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1995–1998 Toyota Avalon passenger cars are identical to their U.S.-certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that non-U.S. certified 1995–1998 Toyota Avalon passenger cars comply with the Bumper Standard found in 49 CFR part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked ''Brake'' for a lens with the ECE warning symbol on the brake failure indicator lamp; (b) replacement of the speedometer/odometer with one calibrated in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamps and front sidemarker lights; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarker lights; (c) installation of U.S.-model high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* Replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* Installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems:* Installation of a relay in the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection*: (a) Installation of a seat belt warning buzzer, wired to the driver's seat belt latch; (b) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components if the vehicle is not already so equipped. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints that are self-tensioning and release by means of a single push button at both front and both rear outboard designated seating positions, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection*: Installation of reinforcing beams if the vehicle is not already so equipped.

The petitioner states that a vehicle identification number plate must be affixed to all non-U.S. certified 1995–1998 Toyota Avalon passenger cars near the left windshield post and a reference and certification label must be added in the left front door post area to meet the requirements of 49 CFR Part 565. The petitioner also states that the vehicles will be inspected prior to importation and that markings will be added, if necessary, to meet the requirements of the Theft Prevention Standard at 49 CFR part 541.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 28, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–14089 Filed 6–2–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5734]

Receipt of Petition for Decision that Nonconforming 1994–1998 Land Rover Discovery Multi-Puprose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1994–1998 Land Rover Discovery multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1994–1998 Land Rover Discovery MPVs that were

not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is July 6, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590 (Docket hours are from 9 am to 5 pm).

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Motors of Baltimore, Maryland (''J.K.'') (Registered Importer 90–006) has petitioned NHTSA to decide whether non-U.S. certified 1994–1998 Land Rover Discovery MPVs are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 1994–1998 Land Rover Discovery MPVs that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1994–1998 Land Rover Discovery MPVs to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 1994–1998 Land Rover Discovery MPVs, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1994–1998 Land Rover Discovery MPVs are identical to their U.S.-certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked ''Brake'' for a lens with the ECE warning symbol on the brake failure indicator lamp; (b) replacement of the speedometer/odometer with one calibrated in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamps and front sidemarker lights; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarker lights; (c) installation of U.S.-model high mounted stop lamp.

Standard No. 111 *Rearview Mirror:* Replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* Installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems:* Installation of a relay in the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 120 *Tire Selection and Rims for Motor Vehicles other than Passenger Cars:* Installation of a tire information placard.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a seat belt warning buzzer, wired to the driver's seat belt latch; (b) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components if the vehicle is not already so equipped. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints that are self-tensioning and release by means of a single push button at both front and both rear outboard designated seating positions, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* Installation of reinforcing beams if the vehicle is not already so equipped.

The petitioner states that a vehicle identification number plate must be affixed to all non-U.S. certified 1994–1998 Land Rover Discovery MPVs near the left windshield post and a reference and certification label must be added in the left front door post area to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 28, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–14090 Filed 6–2–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5735]

Receipt of Petition for Decision that Nonconforming 1993–1995 Volkswagen Eurovan Multi-Purpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1993–1995 Volkswagen Eurovan multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1993–1995 Volkswagen Eurovan MPVs that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is July 6, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. (Docket hours are from 9 am to 5 pm)

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Motors of Baltimore, Maryland (''J.K.'') (Registered Importer 90–006) has petitioned NHTSA to decide whether non-U.S. certified 1993–1995 Volkswagen Eurovan MPVs are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 1993–1995 Volkswagen Eurovan MPVs that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Volkswagen, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1993–1995 Volkswagen Eurovan MPVs to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 1993–1995 Volkswagen Eurovan MPVs, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1993–1995 Volkswagen Eurovan MPVs are identical to their U.S.-certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence* * * *., 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 113 *Hood Latch Systems,* 116 *Brake Fluid, 119 New Pneumatic Tires for Vehicles other than Passenger Cars, 124 Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 203 *Impact Protection for the Driver from the Steering Control System,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies, 210 Seat Belt Assembly Anchorages, 212 Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked ''Brake'' for a lens with the ECE warning symbol on the brake failure indicator lamp; (b) replacement of the speedometer/odometer with one calibrated in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamps and front sidemarker lights; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarker lights; (c) installation of U.S.-model high mounted stop lamp.

Standard No. 111 *Rearview Mirror:* Replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* Installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems:* Installation of a relay in the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 120 *Tire Selection and Rims for Motor Vehicles other than Passenger Cars:* Installation of a tire information placard.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a seat belt warning buzzer, wired to the driver's seat belt latch; (b) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components if the vehicle is not already so equipped. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints that are self-tensioning and release by means of a single push button at both front and both rear outboard designated seating positions, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* Installation of reinforcing

beams if the vehicle is not already so equipped.

The petitioner states that a vehicle identification number plate must be affixed to all non-U.S. certified 1993–1995 Volkswagen Eurovan MPVs near the left windshield post and a reference and certification label must be added in the left front door post area to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 28, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–14091 Filed 6–2–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5736]

Notice of Receipt of Petition for Decision That Nonconforming 1994–1997 Honda Prelude Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1994–1997 Honda Prelude passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1994–1997 Honda Prelude passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is July 6, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. (Docket hours are from 9 a.m. to 5 p.m.).

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Motors of Baltimore, Maryland (''J.K.'') (Registered Importer 90–006) has petitioned NHTSA to decide whether non-U.S. certified 1994–1997 Honda Prelude passenger cars are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 1994–1997 Honda Prelude passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1994–1997 Honda Prelude passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 1994–1997 Honda Prelude passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1994–1997 Honda Prelude passenger cars are identical to their U.S.-certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * *.*, 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that non-U.S. certified 1994–1997 Honda Prelude passenger cars comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked ''Brake'' for a lens with the ECE warning symbol on the brake failure indicator lamp; (b) replacement of the speedometer/odometer with one calibrated in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamps and front sidemarker lights; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarker lights; (c) installation of U.S.-model high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* Replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* Installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems:* Installation of a relay in the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a seat belt warning buzzer, wired to the driver's seat belt latch; (b) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components if the vehicle is not already so equipped. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints that are self-tensioning and release by means of a single push button at both front and both rear outboard designated seating positions.

Standard No. 214 *Side Impact Protection:* Installation of reinforcing beams if the vehicle is not already so equipped.

The petitioner states that a vehicle identification number plate must be affixed to all non-U.S. certified 1994–1997 Honda Prelude passenger cars near the left windshield post and a reference and certification label must be added in the left front door post area to meet the requirements of 49 CFR part 565. The petitioner also states that the vehicles will be inspected prior to importation and that markings will be added, if necessary, to meet the requirements of the Theft Prevention Standard at 49 CFR part 541.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–14092 Filed 6–2–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33747]

Adrian & Blissfield Rail Road Co.—Acquisition Exemption—Grand Trunk Western Railroad Inc.

Adrian & Blissfield Rail Road Company (ADBF), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to acquire (by purchase) approximately 1.38 miles of rail line owned by Grand Trunk Western Railroad Incorporated (GTW) (known as the Lapeer Spur) between milepost 56.28 and milepost 57.62 on GTW's Flint Subdivision at Lapeer, in Lapeer County. In addition, ADBF will lease approximately .88 miles of rail line (known as the Lapeer Second Main) between milepost 289.90 and milepost 290.78 on the Flint Subdivision at Lapeer, in Lapeer County, MI.[1] ADBF will operate both lines.

The transaction was scheduled to be consummated on or shortly after May 20, 1999.

If this notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. An original and 10 copies of all pleadings, referring to STB Finance Docket No. FD 33747, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kenneth J. Bisdorf, 2301 West Big Beaver Road, Suite 600, Troy, MI 48084–3329.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: May 26, 1999.

[1] ADBF certifies that its annual revenues will not exceed those that would qualify it as a Class III rail carrier and that its annual revenues are not projected to exceed $5 million.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–14036 Filed 6–2–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33752]

Greenville County Economic Development Corporation—Acquisition Exemption—South Carolina Central Railroad Company, Inc., Carolina Piedmont Division

Greenville County Economic Development Corporation (Greenville County), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire two sections of rail line from the South Carolina Central Railroad Company, Inc., Carolina Piedmont Division (CPDR), in Greenville County, SC, as follows: (1) between milepost AJK 585.34, in East Greenville, and milepost AJK 588.63, in Greenville, a distance of 3.29 miles (Southern Line);[1] and (2) between milepost 0.0, in Greenville, and milepost 11.8, in Traveler's Rest, a distance of 11.8 miles (Northern Line).[2]

The transaction is expected to be consummated on or shortly after May 28, 1999.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33752, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Robert J. Svets, Counsel for Greenville County Economic Development Corporation, Greenville County Square, 301 University Ridge, Suite 100, Greenville, SC 29601.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

[1] Greenville County reports that CPDR will continue to be the operator of the Southern Line.

[2] Greenville County states that it is currently seeking an operator for the Northern Line and that, once it reaches an agreement with the operator of the Northern Line, the operator will file a verified notice of exemption to operate the Northern Line.

Decided: May 26, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–13934 Filed 6–2–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request

May 19, 1999.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Interested persons may obtain copies of the submission by calling the OTS Clearance Officer listed. Send comments regarding this information collection to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW, Washington, D.C. 20552.

DATES: Submit written comments on or before July 6, 1999.

OMB Number: 1550–0098.

Form Number: Not applicable.

Type of Review: Reinstatement of previously approved information collection without change.

Title: Privacy and Accuracy of Customer Account Information.

Description: Consumer privacy is a growing concern because financial institutions can use new technology to access, compile, and relay account information quickly and easily to the customer, other institution staff, and third parties. New technology also increases the potential for misuse or alteration of customer information. Before a savings association collects any information from a customer, the OTS policy statement indicates that it should describe to that customer how the information will be used.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Recordkeepers: 1,200.

Estimated Burden Hours Per Recordkeeper: 40 hours.

Frequency of Response: One.

Estimated Total Recordkeeping Burden: 49,200 hours.

Clearance Officer: Mary Rawlings-Milton, (202) 906–6028, Office of Thrift Supervision, 1700 G Street, NW, Washington, D.C. 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Frank Di Gialleonardo,

CIO and Director, Office of Information Systems.

[FR Doc. 99–13965 Filed 6–2–99; 8:45 am]

BILLING CODE 6720–01–P

Corrections

Federal Register

Vol. 64, No. 106

Thursday, June 3, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration of Children and Families

[Program Announcemenet No. ACF/ACYF 99-06]

Fiscal Year 1999 Discretionary Announcement for Head Start Family Literacy Projects

Correction

In notice document 99– 13425 appearing on page 28500 in the issue of Wednesday, May 26, 1999, make the following correction:

On page 28500, in the second column, in the **DATES:** section, in the third line, after ''(Eastern Time Zone)'' add ''July 26, 1999''.

[FR Doc. C9–13425 Filed 6–2–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99-AGL-33]

Proposed Modification of Class E Airspace; Minneapolis, MN

Correction

In proposed rule document 99–13229, beginning on page 28122, in the issue of Tuesday, May 25, 1999, make the following correction(s):

§ 71.1 [Corrected]

1.On page 28123, in the first column, in § 71.1, the under heading **AGL MN E5 Minneapolis MN [Revised]**, in the sixth line, ''(Lat., 44°08′42″N.,'' should read ''(Lat., 45°08′42″N.,''.

2. On page 28123, in the first column, in § 71.1, under the heading **AGL MN E5 Minneapolis MN [Revised]**, in the 15th line, ''for'' should read ''of''.

[FR Doc. C9–13229 Filed 6-2-99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99-AGL-12]

Modification of Class D Airspace and Class E Airspace; Minot, ND

Correction

In rule document 99–13228, beginning on page 28901, in the issue of Tuesday, May 25, 1999, make the following correction:

§ 71.1 [Corrected]

On page 28092, in the second column, in § 71.1, under the heading **AGL ND E4 Minot, ND [Revised]**, in the fourth line, ''(Lat. 48°15′34″N.,'' should read ''(Lat. 48°15′37″N.,''.

[FR Doc. C9–13228 Filed 6-2-99; 8:45 am]

BILLING CODE 1505–01–D§

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99-AGL-14]

Modification of Class D Airspace and Class E Airspace; Wilmington, OH

Correction

In rule document 99–13237, beginning on page 28093, in the issue of Tuesday, May 25, 1999, make the following correction:

§ 71.1 [Corrected]

On page 28094, in the second column, in § 71.1, in the fourth line from the bottom, ''aeras'' should read ''areas''.

[FR Doc. C9–13237 Filed 6-2-99; 8:45 am]

BILLING CODE 1505–01–D

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Head impact protection; petitions denied; comments due by 6-8-98; published 4-22-98

TREASURY DEPARTMENT

Thrift Supervision Office

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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H.R. 1034/P.L. 106–32

To declare a portion of the James River and Kanawha Canal in Richmond, Virginia, to be nonnavigable waters of the United States for purposes of title 46, United States Code, and the other maritime laws of the United States. (June 1, 1999; 113 Stat. 115)

Last List May 26, 1999

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Operations:

Transactions with affiliates; reverse repurchase agreements; comments due by 6-12-98; published 4-13-98

VETERANS AFFAIRS DEPARTMENT

Acquisition regulations:

Improper business practices and personal conflicts of interest and solicitation provisions and contract clauses; comments due by 6-8-98; published 4-7-98