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Contents

Federal Register

Vol. 64, No. 238

Monday, December 13, 1999

Agency for Toxic Substances and Disease Registry
NOTICES
Committees; establishment, renewal, termination, etc.:
Scientific Counselors Board; special consultants, 69535–69537

Agricultural Marketing Service
RULES
Avocados grown in—
Florida, 69380–69383
Oranges and grapefruit grown in—
Texas, 69375–69380
Oranges, grapefruit, tangerines, and tangelos grown in—
Florida, 69371–69375
PROPOSED RULES
Onions (Vidalia) grown in—
Georgia, 69419–69421
Spearmint oil produced in Far West, 69421–69425

Agriculture Department
See Agricultural Marketing Service
See Forest Service
See Rural Utilities Service

Air Force Department
NOTICES
Commercial activities performance (OMB A-76); cost comparison studies, 69512–69516

Army Department
See Engineers Corps

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Census Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 69477–69478

Centers for Disease Control and Prevention
NOTICES
Meetings:
Disease, Disability, and Injury Prevention and Control Special Emphasis Panels, 69537
Mine Safety and Health Research Advisory Committee, 69537–69538

Coast Guard
NOTICES
Organization, functions, and authority delegations:
Coast Guard Mutual Assistance Control Board; secretarial authorization for Coast Guard members and employees to serve, 69578–69579

Commerce Department
See Census Bureau
See Export Administration Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Taiwan, 69510
Thailand, 69510–69511

Consumer Product Safety Commission
NOTICES
Settlement agreements:
Baby's Dream Furniture, Inc., 69511–69512

Customs Service
NOTICES
Commercial gauger:
Approval—
Saybolt Inc., 69594–69595

Defense Department
See Air Force Department
See Engineers Corps

Drug Enforcement Administration
NOTICES
Reports and guidance documents; availability, etc.:
Year 2000 (Y2K) contingency plans, 69548–69549

Education Department
NOTICES
Administrative Law Judges Office hearings:
Claim compromises—
Puerto Rico Education Department, 69516–69517
Agency information collection activities:
Submission for OMB review; comment request, 69516

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission

Energy Efficiency and Renewable Energy Office
PROPOSED RULES
Energy conservation:
Commercial and industrial equipment, energy efficiency program—
Warm air furnaces and heating, air conditioning, and water heating equipment; test procedures and efficiency standards, etc., 69597–69620

Engineers Corps
RULES
Navigation regulations:
St. Marys Falls Canal and Soo Locks, MI; administration and navigation, 69402–69404

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
California, 69404–69407
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
2,4-dichlorophenoxyacetic acid, 69407–69409
Clomazone, 69409–69415

PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
California, 69448
NOTICES
Agency information collection activities:
Proposed collection; comment request, 69527–69528 , 69528–69530
Reports and guidance documents; availability, etc.:
Relationship between exposure duration and toxicity; workshop summary, 69530
Toxic and hazardous substances control:
New chemicals; receipt and status information, 69530–69533

Export Administration Bureau
NOTICES
Export privileges, actions affecting:
MK Technology Associates, Ltd., 69478–69481

Federal Aviation Administration
RULES
Airworthiness directives:
Airbus, 69386–69388
Boeing; correction, 69392–69394
Fokker, 69390–69392, 69394–69396
McDonnell Douglas, 69389–69390
Airworthiness standards:
Special conditions—
CASA Model C-295 airplane, 69383–69386
PROPOSED RULES
Airworthiness directives:
CFM International, 69428–69430
Airworthiness standards:
Special conditions—
Boeing Model 777 series airplanes, 69425–69428
Class E airspace, 69430–69432
Commercial space transportation:
Licensed reentry activities; financial responsibility requirements, 69627–69628
NOTICES
Meetings:
Communications/Surveillance Operational Implementation Team; Controller-Pilot Data Link Communication Program, 69579
Passenger facility charges; applications, etc.:
Duluth Airport Authority, MN, et al., 69579–69581

Federal Communications Commission
NOTICES
Meetings; Sunshine Act, 69534

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Grand River Dam Authority, 69523
Hydroelectric applications, 69524–69525
Meetings; Sunshine Act, 69525–69527
Applications, hearings, determinations, etc.:
Amana Co., L.P., 69517
Chandeleur Pipe Line Co., 69517
El Paso Natural Gas Co., 69517
Granite State Gas Transmission, Inc., 69517–69518
Guardian Pipeline, L.L.C., 69518–69520
Mississippi River Transmission Corp., 69520
National Fuel Gas Supply Corp., 69520–69521
Northwest Pipeline Corp., 69521
Panhandle Eastern Pipe Line Co., 69521–69522
Tennessee Gas Pipeline Co., 69522
Transcontinental Gas Pipe Line Corp., 69522–69523
Transok, LLC, 69523
Williams Gas Pipelines Central, Inc., 69523

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 69534–69535
Permissible nonbanking activities, 69535

Federal Trade Commission
RULES
Privacy Act; implementation, 69397

Food and Drug Administration
NOTICES
Food additive petitions:
Avecia Inc., 69538
Meetings:
Medical Devices Advisory Committee, 69538

Forest Service
PROPOSED RULES
National Forest System land and resource management planning
Supplemental information, 69446–69448
NOTICES
Environmental statements; notice of intent:
Nez Perce National Forest, ID, 69473–69474
White Mountain National Forest, NH, 69474–69476

General Services Administration
NOTICES
Senior Executive Service:
Perfomance Review Board; membership, 69535

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Care Financing Administration
See Inspector General Office, Health and Human Services Department
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Health Care Financing Administration
See Inspector General Office, Health and Human Services Department
NOTICES
Meetings:
Medicare Coverage Advisory Committee, 69538–69539

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Community Development Work Study Program, 69621–69626

Inspector General Office, Health and Human Services Department
NOTICES
Program exclusions; list, 69539–69541

Interior Department
See Land Management Bureau

See National Park Service
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Procedural rules:
Penalty mail use in location and recovery of missing children, 69398–69399

International Trade Administration
NOTICES
Antidumping:
Canned pineapple fruit from—
Thailand, 69481–69487
Carbon steel butt-weld pipe fittings from—
Thailand, 69487–69488
Circular welded carbon steel pipes and tubes from—
Taiwan, 69488–69491
Cold-rolled flat-rolled carbon-quality steel products from—
Slovakia, 69491–69492
Dynamic random access memory semiconductors from—
Korea, 69492–69493
Pasta from—
Turkey, 69493–69494
Persulfates from—
China, 69494–69503
Sebacic acid from—
China, 69503–69509

Justice Department
See Drug Enforcement Administration
See National Institute of Justice

Labor Department
See Mine Safety and Health Administration
See Occupational Safety and Health Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 69550–69551

Land Management Bureau
NOTICES
Withdrawal and reservation of lands:
Nevada; correction, 69545

Maritime Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 69582

Mine Safety and Health Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 69551–69552

National Aeronautics and Space Administration
RULES
Acquisition regulations:
Requiring information other than cost or pricing data; inconsistency correction, 69415–69416
NOTICES
Meetings:
Advisory Council task forces, 69555–69556
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Cyrospace Technologies, 69556
Tyco Healthcare Group LP, 69556
Privacy Act:
Systems of records, 69556–69571

National Archives and Records Administration
NOTICES
Agency records schedules; availability, 69571–69572
Electronic copies previously covered by General Records Schedule 20; records schedules availability and comment request, 69572–69573

National Foundation on the Arts and the Humanities
NOTICES
Senior Executive Service:
Performance Review Board; membership, 69573–69574

National Highway Traffic Safety Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 69582–69583
Motor vehicle safety standards:
Nonconforming vehicles—
Importation eligibility; determinations, 69583–69586

National Institute of Justice
NOTICES
Meetings:
Future of DNA Evidence National Commission, 69549–69550

National Institutes of Health
NOTICES
Grants and cooperative agreements; availability, etc.:
National Cancer Institute—
Nitric oxide synthase 2 (NOS2) activity modulators screening and use for diagnosis and treatment of cancer, 69541–69543
Meetings:
Scientific Review Center, 69543–69544

National Oceanic and Atmospheric Administration
RULES
Endangered and threatened species:
Sea turtle conservation; shrimp trawling requirements
Turtle excluder device, 69416–69418
PROPOSED RULES
Endangered and threatened species:
Critical habitat designation—
Johnson's seagrass, 69448–69457
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Bering Sea and Aleutian Islands groundfish, 69464–69472
Gulf of Alaska groundfish, 69457–69464

National Park Service
NOTICES
Environmental statements; availability, etc.:
Sleeping Bear Dunes National Lakeshore, MI, 69545–69546
Yellowstone and Grand Teton National Parks and John D. Rockefeller, Jr., Memorial Parkway, WY and MT; winter use plan, 69546
Environmental statements; notice of intent:
Pictured Rocks National Lakeshore, MI, 69546–69547
National Register of Historic Places:
Pending nominations, 69547
Oil and gas plans of operations; availability, etc.:
Padre Island National Seashore, TX, 69547–69548

Nuclear Regulatory Commission
NOTICES
Meetings:
Nuclear Energy Institute and public; voluntary industry initiatives; guidelines development, 69574–69575
Applications, hearings, determinations, etc.:
Power Authority of State of New York; correction, 69574

Occupational Safety and Health Administration
NOTICES
Nationally recognized testing laboratories, etc.:
Curtis-Straus LLC, 69552–69555

Office of Motor Carrier Safety
NOTICES
Motor carrier safety standards:
Driver qualification—
Durham, James F.; vision requirement exemption, 69586–69590

Patent and Trademark Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 69509

Public Health Service
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Railroad Retirement Board
NOTICES
Supplemental annuity program; determination of quarterly rate of excise tax, 69575

Research and Special Programs Administration
NOTICES
Hazardous materials transportation:
Safety advisories—
Compressed gas cylinders; unauthorized marking, 69590
Pipeline safety:
System Integrity Inspection Pilot Program; candidate companies screening, 69590–69594

Rural Utilities Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 69476–69477

Securities and Exchange Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 69575
Applications, hearings, determinations, etc.:
SAFECO Life Insurance Co. et al., 69576–69578

Substance Abuse and Mental Health Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Substance Abuse Treatment Center—
Community Treatment Program, 69544–69545

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Virginia, 69399–69402

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Maryland & Pennsylvania Railroad Co. et al., 69594

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Maritime Administration
See National Highway Traffic Safety Administration
See Office of Motor Carrier Safety
See Research and Special Programs Administration
See Surface Transportation Board

Treasury Department
See Customs Service
See Internal Revenue Service
PROPOSED RULES
Balanced Budget Act of 1997; implementation:
District of Columbia retirement plans; Federal benefit payments, 69432–69446

Veterans Affairs Department
NOTICES
Advisory committees; annual reports; availability, 69595

Separate Parts In This Issue

Part II
Department of Energy, Energy Efficiency and Renewable Energy Office, 69597–69620

Part III
Department of Housing and Urban Development, 69621–69626

Part IV
Department of Transportation, Federal Aviation Administration, 69627–69628

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
905.....69371
906.....69375
915.....69380
Proposed Rules:
955.....69419
985.....69421

10 CFR
Proposed Rules:
431.....69598

14 CFR
25.....69383
39 (5 documents) 69386, 69389, 69390, 69392, 69394
Proposed Rules:
25.....69425
39.....69428
71 (2 documents) 69430, 69431
450.....69628

16 CFR
4.....69397

26 CFR
601.....69398

30 CFR
946.....69399

31 CFR
Proposed Rules:
28.....69432

33 CFR
207.....69402

36 CFR
Proposed Rules:
217.....69446
219.....69446

40 CFR
52.....69404
180 (2 documents) 69407, 69409
Proposed Rules:
52.....69448

48 CFR
1815.....69415

50 CFR
222.....69416
223.....69416
Proposed Rules:
226.....69448
679 (2 documents) 69458

Rules and Regulations

Federal Register
Vol. 64, No. 238
Monday, December 13, 1999

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

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV99–905–4 FIR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Modification of Procedures for Limiting the Volume of Small Red Seedless Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule modifying the procedures used in limiting the volume of small red seedless grapefruit prescribed under the marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida. The marketing order is administered locally by the Citrus Administrative Committee (committee). The changes will help the committee better monitor handler compliance with any percentage size regulations in effect. This rule continues the changes in handler reporting requirements on shipments of size 48 and/or 56 red seedless grapefruit to standardize and assure continuity of reporting. Provisions on new handlers are also continued to assure equitable application of the percentage size regulation to new and established handlers. These modifications are expected to help the committee better administer the percentage size regulations, when such regulations are effective.

EFFECTIVE DATE: January 12, 2000.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, F&V, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276; telephone: (941) 299–4770, Fax: (941) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 690–3919, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698 or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect, and will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

Section 905.52 of the order provides authority to limit shipments of any grade or size, or both, of any variety of Florida citrus. Such limitations may restrict the shipment of a portion of a specified grade or size of a variety.

Section 905.153 of the regulations provides procedures for limiting the volume of small red seedless grapefruit entering the fresh market. Under the procedures, the committee may recommend that only a certain percentage of size 48 ($3\frac{9}{16}$ minimum diameter in inches) and/or size 56 ($3\frac{5}{16}$ minimum diameter in inches) red seedless grapefruit be made available for shipment into fresh market channels for any week or weeks during the regulation period. The regulation period is 11 weeks long and begins the third Monday in September. Under such a limitation, the quantity of sizes 48 and/or 56 red seedless grapefruit that may be shipped by a handler during a regulated week is calculated using the recommended percentage. By taking the recommended weekly percentage times the average weekly volume of red seedless grapefruit handled by such handler in the previous five seasons, handlers can calculate the volume of sizes 48 and/or 56 they may ship in a regulated week. Provisions also are included in paragraph (a) for handlers with less than five previous seasons of shipments and new handlers with no record of shipments. The committee performs the specified calculations when regulation is established by the Secretary for a given week, and provides the calculations to each handler.

Section 905.153 contains a variety of provisions designed to provide handlers with some marketing flexibility. Paragraphs (d) and (e) of that section provide allowances for overshipments, loans, and transfers of allotment. These allowances allow handlers the opportunity to supply their markets while limiting the impact of small sizes on a weekly basis.

Pursuant to paragraph (d) of § 905.153, during any week for which the Secretary fixes the percentage of sizes 48 and/or 56 red seedless grapefruit, any handler can handle an amount of sizes 48 and/or 56 red seedless grapefruit not to exceed 110

percent of their allotment for that week. The quantity of overshipments (the amount shipped in excess of a handler's weekly allotment) is deducted from the handler's allotment for the following week.

If handlers fail to use their entire allotments in a given week, the amounts undershipped cannot be carried forward to the following week. However, pursuant to paragraph (e) of § 905.153, a handler to whom an allotment has been issued can lend or transfer all or part of such allotment (excluding the overshipment allowance) to another handler. In the event of a loan, each party, prior to the completion of the loan agreement, notifies the committee of the proposed loan and date of repayment. If a transfer of allotment is desired, each party promptly notifies the committee so that proper adjustments of the records can be made. In each case, the committee confirms in writing all such transactions prior to the following week. Under these provisions, the committee can act on behalf of handlers wanting to arrange allotment loans or participate in the transfer of allotment.

The committee computes each handler's allotment by multiplying the handler's average week by the percentage established by regulation for that week. The committee notifies each handler prior to that particular week of the quantity of sizes 48 and 56 red seedless grapefruit such handler could handle during a particular week, making the necessary adjustments for overshipments and loan repayments.

This rule continues in effect reporting procedures in paragraphs (d) and (e) of § 905.153, and the addition of a new paragraph (f) on new handler participation. The changes were recommended unanimously by the committee at its meeting on April 6, 1999.

This rule does not establish any volume regulation. A proposed rule to establish volume regulation during the 1999–2000 season was published in the **Federal Register** on August 26, 1999 (64 FR 46603). The period for the receipt of written comments on that proposal ended September 10, 1999. Subsequently, an interim final rule adjusting the proposed percentages as recommended by the committee was published in the **Federal Register** on September 17, 1999 (64 FR 50419). Comments were invited until September 27, 1999, and none was received. An action finalizing the interim final rule was published November 18, 1999 (64 FR 63159).

The changes continued in effect by this rule are intended to standardize and foster uniformity of reporting, help the committee better monitor compliance with any percentage size regulations in effect, and improve overall administration of the program. The provisions on ''new handler'' registration are intended to ensure that the shipment calculations for such handlers are correct and that the shipment allotments are appropriately applied. According to committee management, these improvements have worked well.

This rule continues in effect the revisions to paragraph (d) of § 905.153 requiring handlers to report red seedless grapefruit shipments to interstate and export markets by day for each regulation week. The report is required to be completed and received by the committee no later than 2 p.m. of the business day following the shipments. The committee previously obtained shipment information from daily manifest reports from the Florida Department of Agriculture and Consumer Services' Fruit and Vegetable Division, but the information needed to be reformatted by the committee for use in checking handler compliance with the weekly percentage size regulation, and in arranging loans or transfers of excess allotments among handlers. This had been costly and time consuming for the committee.

When percentage size regulations were applied last season, most handlers voluntarily supplied (electronically or by fax) the committee with daily shipment information on their size 48 and/or 56 size red seedless grapefruit. This helped the committee expedite the compilation and dissemination of shipment information on the small-sized red seedless grapefruit. The more timely information helped the handlers make marketing plans to service their customers better, and enabled the committee to verify handler compliance in a more timely and less burdensome manner.

The information provided by handlers shipping 48 and/or 56 size red seedless grapefruit is maintained by them as part of their regular business operations so the burden in supplying this information has been minimal. Thus, the addition of this reporting requirement to the procedures in § 905.153(d) merely standardizes the collection of information which handlers maintain as part of their regular business operations. The report has ensured that the daily shipment information received by the committee is in the same format from all handlers shipping 48 and/or 56 size red seedless grapefruit.

Paragraph (e) of § 905.153 previously specified, among other things, that each handler party to a transfer or loan of any or all of their shipping allotment (excluding the overshipment allowance) shall promptly notify the committee so the proper adjustment of records may be made. To provide uniformity in reporting and help the committee confirm such transactions prior to the following week to the handlers involved, the committee recommended that the notification be made no later than noon on the Wednesday following the regulation week.

With a precise reporting deadline, the committee has been able to adjust its records in a more timely manner and more easily confirm the transactions in writing to the handlers involved prior to the following week. It also has enabled the committee to do a more effective job when acting on behalf of handlers in arranging allotment loans or transfers. Continuation of this change will not be unduly burdensome on handlers because most had already been filing their reports by the specified deadline prior to the issuance of the interim final rule.

The committee also recommended precluding sales agents of handlers from filing weekly cumulative handler reports on transfers or loans for all of the handlers they represent, rather than reports for each handler involved in such transactions. The current provisions require individual reports to be filed and the individual handlers involved are required to certify that the information on the reports submitted to the committee is accurate. Thus, no change in § 905.153 is needed to require sales agents to submit individual handler reports on such transactions for each of the participating handlers for which they act as sales agents.

A new paragraph (f) was added to § 905.153 covering new handler registration. The new paragraph specifies that new handlers without a shipment history shall register with the committee for their red seedless grapefruit allotments prior to the regulation period. On a form provided by the committee, each new handler indicates its name, address, telephone and fax number, its Florida citrus dealer's license number, the packinghouse registration number issued by the Florida Department of Agriculture and Consumer Services' Fruit and Vegetable Division, and the physical location of the packinghouse where the red seedless grapefruit will be prepared for market. New handler registrations have allowed the committee to place the handler on its

mailing list to assure that the handler receives needed information.

The addition of these registration procedures for new handlers will assure that these handlers continue to receive the shipment allocations to which they are entitled during the regulation period, and help the committee with its handler audits and compliance checks.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0094. Also, pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

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

There are approximately 80 grapefruit handlers subject to regulation under the order and approximately 11,000 growers of citrus in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (SBA) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000 (13 CFR 121.601).

Based on industry and committee data, the average annual f.o.b. price for fresh Florida red grapefruit during the 1998–99 season was around $7.20 per 4/5 bushel carton, and total fresh shipments for the 1998–99 season are estimated at 14.6 million cartons of red grapefruit. Approximately 20 percent of all handlers handled 60 percent of Florida grapefruit shipments. In addition, many of these handlers ship other citrus fruit and products which are not included in committee data but would contribute further to handler receipts. Using the average f.o.b. price, about 80 percent of grapefruit handlers could be considered small businesses under SBA's definition, and about 20 percent of the handlers could be considered large businesses. The majority of Florida grapefruit handlers and growers may be classified as small entities.

Section 905.52 of the order provides authority to limit shipments of any grade or size, or both, of any variety of Florida citrus. Such limitations may restrict the shipment of a portion of a specified grade or size of a variety.

Section 905.153 of the regulations provides procedures for limiting the volume of small red seedless grapefruit entering the fresh market. Under the procedures, the committee may recommend that only a certain percentage of size 48 (3 9/16 minimum diameter in inches) and/or size 56 (3 5/16 minimum diameter in inches) red seedless grapefruit be made available for shipment into fresh market channels for any week or weeks during the regulation period. The regulation period is 11 weeks long and begins the third Monday in September. Under such a limitation, the quantity of sizes 48 and/or 56 red seedless grapefruit that may be shipped by a handler during a regulated week is calculated using the recommended percentage. By taking the recommended weekly percentage times the average weekly volume of red seedless grapefruit handled by such handler in the previous five seasons, handlers can calculate the volume of sizes 48 and/or 56 they may ship in a regulated week. Provisions also are included in paragraph (a) for handlers with less than five previous seasons of shipments and new handlers with no record of shipments. The committee staff performs the specified calculations when regulation is established by the Secretary for a given week, and provides the calculations to each handler.

Section 905.153 contains a variety of provisions designed to provide handlers with some marketing flexibility. Paragraphs (d) and (e) of that section provide allowances for overshipments, loans, and transfers of allotment. These allowances allow handlers the opportunity to supply their markets while limiting the impact of small sizes on a weekly basis.

Pursuant to paragraph (d) of § 905.153, during any week for which the Secretary fixes the percentage of sizes 48 and/or 56 red seedless grapefruit, any handler can handle an amount of sizes 48 and/or 56 red seedless grapefruit not to exceed 110 percent of their allotment for that week. The quantity of overshipments (the amount shipped in excess of a handler's weekly allotment) is deducted from the handler's allotment for the following week.

If handlers fail to use their entire allotments in a given week, the amounts undershipped cannot be carried forward to the following week. However, pursuant to paragraph (e) of § 905.153 a handler to whom an allotment has been issued can lend or transfer all or part of such allotment (excluding the over shipment allowance) to another handler. In the event of a loan, each party, prior to the completion of the loan agreement, notifies the committee of the proposed loan and date of repayment. If a transfer of allotment is desired, each party promptly notifies the committee so that proper adjustments of the records can be made. In each case, the committee confirms in writing all such transactions prior to the following week. Under these provisions, the committee can act on behalf of handlers wanting to arrange allotment loans or participate in the transfer of allotment.

The committee computes each handler's allotment by multiplying the handler's average week by the percentage established by regulation for that week. The committee notifies each handler prior to that particular week of the quantity of sizes 48 and 56 red seedless grapefruit such handler could handle during a particular week, making the necessary adjustments for overshipments and loan repayments.

This rule continues in effect the modified reporting procedures in paragraphs (d) and (e) of § 905.153, and the addition of a new paragraph (f) on new handler participation. The changes were recommended unanimously by the committee at its meeting on April 6, 1999.

This rule does not establish any volume regulation. A proposed rule to establish volume regulation during the 1999–2000 season was published in the **Federal Register** on August 26, 1999 (64 FR 46603). The period for the receipt of written comments on that proposal ended September 10, 1999. Subsequently, an interim final rule was published in the **Federal Register** on September 27, 1999 (64 FR 51888) establishing adjusted percentages recommended by the committee. The period for written comments ended on October 27, 1999, and none was received. An action finalizing the interim final rule was published on November 18, 1999 (64 FR 63159).

The changes continued by this rule are intended to standardize and foster uniformity of reporting, help the committee better monitor compliance with any percentage size regulations in effect, and improve overall administration of the program. The provisions on ''new handler'' registration are intended to ensure that new handlers receive shipment allotments, that the shipment calculations for such handlers are correct, and that the shipment allotments are appropriately applied.

According to committee management, these improvements have worked well during 1999.

This action continues in effect the revisions to paragraph (d) of § 905.153 requiring handlers to report red seedless grapefruit shipments to interstate and export markets by day for each regulation week. The report is required to be completed and received by the committee no later than 2 p.m. of the business day following the shipments. The committee previously obtained shipment information from daily manifest reports from the Florida Department of Agriculture's Division of Fruit and Vegetable, but the information needed to be reformatted by the committee for use in checking handler compliance with the weekly percentage size regulation, and in arranging loans or transfers of excess allotment among handlers. This had proven to be costly and time consuming for the committee.

When percentage size regulations were applied last season, most handlers voluntarily supplied (electronically or by fax) the committee daily shipment information on their size 48 and/or 56 size red seedless grapefruit to help the committee expedite the compilation and dissemination of shipment information on the small-sized red seedless grapefruit. The more timely information helped the handlers make marketing plans, and enabled the committee to verify handler compliance in a more timely and less burdensome manner.

The information provided by handlers shipping 48 and/or 56 size red seedless grapefruit is maintained by them as part of their regular business operations so the burden in supplying this information has been minimal. Thus, the continuation of this reporting requirement in the procedures in § 905.153(d) merely standardizes the collection of information which handlers maintain as part of their regular business operations.

Paragraph (e) of § 905.153 specifies, among other things, that each handler party to a transfer or loan of any or all of their shipping allotment (excluding the over shipment allowance) shall promptly notify the committee so the proper adjustment of records may be made. To provide uniformity in reporting and help the committee confirm such transactions prior to the following week to the handlers involved, the committee recommended that the notification be made no later than noon on the Wednesday following the regulation week.

With a precise reporting deadline, the committee has been able to adjust its records in a more timely manner and more easily confirm the transactions in writing to the handlers involved prior to the following week. It also has been able to do a more effective job when acting on behalf of handlers in arranging allotment loans or transfers. This change will not be unduly burdensome on handlers because most are already filing their reports by the specified deadline.

The committee also recommended precluding sales agents of handlers from filing weekly cumulative handler reports on transfers or loans for all of the handlers they represent, rather than reports for each handler involved in such transactions. The current provisions require individual reports to be filed and the individual handlers involved are required to certify that the information on the reports submitted to the committee is accurate. Thus, no change is required to the procedures in § 905.153 to require sales agents to report information on an individual handler basis.

Regarding the provisions on new handler registration, a new paragraph (f) was added to § 905.153. The new paragraph specifies that new handlers without a shipment history shall register for their red seedless grapefruit allotments prior to the regulation period. On a form provided by the committee, each new handler indicates its name, address, telephone and fax number, its Florida citrus dealer's license number, the packinghouse registration number issued by the Florida Department of Agriculture and Consumer Services' Fruit and Vegetable Division, and the physical location of the packinghouse where the red seedless grapefruit will be prepared for market.

The addition of these registration procedures for new handlers will continue to assure that these handlers receive the shipment allocations to which they are entitled during the regulation period, and help the committee with its handler audits and compliance checks.

Handlers will be required to submit a form to the committee on their daily shipments of size 48 and/or 56 red seedless grapefruit, and new handlers also will have to submit a registration form to ship fruit pursuant to any allotment percentage established by the Secretary. The rule will increase the reporting burden on approximately 80 handlers of red seedless grapefruit who will take about 0.05 of an hour to complete each report regarding allotment loans or transfers, and shipments. New handlers without a record of shipments registering with the committee will take about 0.03 of an hour to complete the ''new handler'' registration form. The information collection requirements contained in § 905.153 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and assigned OMB number 0581–0094.

The committee considers the changes made by this rule the most viable ways to improve the percentage size volume regulation procedures.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. However, red seedless grapefruit must meet the requirements as specified in the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.750 through 51.784) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

In addition, the committee's meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the April 6, 1999, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: http://www.ams.usda.gov/fv/moab/ .html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

An interim final rule concerning this action was published in the **Federal Register** on September 27, 1999. Copies of the rule were mailed by the Committee's staff to all Committee members and grapefruit handlers. In addition, the rule was made available through the Internet by the Office of the **Federal Register**. That rule provided for a 30-day comment period which ended October 27, 1999. No comments were received.

After consideration of all relevant material presented, including the information and recommendations submitted by the committee and other available information, it is hereby found that finalizing the interim final rule, without change, as published in the **Federal Register** (64 FR 51888, September 27, 1999) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Accordingly, the interim final rule amending 7 CFR part 905 which was published at 64 FR 51888 on September 27, 1999, is adopted as a final rule without change.

Dated: December 7, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–32231 Filed 12–10–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV99–906–3 FIR]

Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas; Changes to Pack Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule which changed the pack requirements prescribed under the marketing order covering oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. The marketing order regulates the handling of such fruit and is administered locally by the Texas Valley Citrus Committee (Committee). This rule continues in effect the changes to the orange and grapefruit pack sizes so that each pack size reflects the actual number of fruit in a 7/10 bushel carton. It also more closely aligns the pack sizes for Texas oranges with the pack sizes used by shippers of California oranges. The rule also continues in effect conforming changes to the pack size references in the minimum size regulations. Continuation of these changes will enable Texas handlers to compete more effectively in the marketplace.

EFFECTIVE DATE: January 12, 2000.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Regional Manager, McAllen Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry, McAllen, Texas 78501; telephone: (956) 682–2833, Fax: (956) 682–5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 906, as amended (7 CFR part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule continues in effect the changes to the previous orange and grapefruit pack sizes from a 1 2/5 bushel box basis to pack sizes based upon the actual number of fruit packed in a 7/10 bushel carton. The orange pack sizes will also be more closely aligned to the pack sizes and size tolerances used by California orange shippers. The rule also continues in effect the conforming changes to the pack size references in the minimum size regulations for oranges and grapefruit so the minimum size requirements remain the same as previously specified. Continuation of these changes will enable handlers to compete more effectively in the marketplace.

The Committee's Grade and Size Subcommittee met on April 20 and 29, and May 4, 1999, and discussed possible changes to the order's pack requirements. At a meeting on May 13, 1999, the Subcommittee recommended and the Committee unanimously approved changes to the regulations. On July 1, 1999, the Committee met again and unanimously recommended the following changes to the orange and grapefruit pack and conforming changes to the size regulations.

(1) Eliminate two pack size tables for different orange varieties, change the pack sizes to a 7/10 bushel carton basis for all orange varieties to be consistent with California pack sizes, and add a pack size 64 to the California sizes. The changes resulted in one pack size chart ranging from pack size 24 to 138 with minimum and maximum diameter size ranges for all oranges, and, when packed in 7/10 bushel containers, the pack sizes reflect the actual number of fruit in the container;

(2) Replace the 1 2/5 bushel box references in the regulations with 7/10 bushel carton references;

(3) Change the grapefruit pack sizes based on a 1 2/5 bushel box to pack sizes based upon the actual number of fruit packed in a 7/10 bushel carton; and

(4) Make conforming changes to the size requirements in § 906.365 based on the above changes to keep the minimum size requirements for oranges and grapefruit the same as previously specified.

Under the terms of the order, fresh market shipments of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas are required to be inspected and meet grade, size, container, and pack requirements. Section 906.40 authorizes the issuance of pack regulations. Section 906.340(a)(2) of the order's rules and regulations outlines pack requirements for fresh shipments of Texas oranges and grapefruit.

Changes to the Pack Requirements for Oranges

Section 906.340(a)(2)(i) specifies pack requirements for oranges. It previously included two tables specifying pack sizes in terms of minimum and maximum diameters for each specified pack size, for different varieties of oranges. Packing tolerances for off-size continue to be specified, together with standard pack requirements.

Previously, oranges were divided into two categories for the purpose of pack regulations: (1) Navel, Valencia, and similar late-type oranges, and (2) all other varieties of oranges. For all types of oranges, 13 pack sizes ranging from pack size 46 (the largest fruit) to pack size 324 (the smallest fruit) were specified. The minimum diameters for Navel, Valencia, and similar late-type oranges for each of the pack sizes were 2/16 inch smaller than those specified for all other oranges, while the maximum diameters for all varieties of oranges in the 13 pack sizes were the same.

All oranges, however, must have been at least pack size 288, except that the minimum diameter limit was 2 6/16 inches.

The previous orange pack sizes and minimum and maximum diameters are shown in the following tables:

Table I (Section 906.304(a)(2)(i)(a))

TABLE I—ORANGES, EXCEPT NAVELS, VALENCIAS, AND SIMILAR LATE-TYPE ORANGES

[1 2/5 bushel box]

Pack size	Diameter in inches	
	Minimum	Maximum
46's	4 5/16	5
54's or 56's	4 2/16	4 12/16
64's	3 15/16	4 8/16
70's or 72's	3 13/16	4 5/16
80's	3 10/16	4 2/16
100's	3 7/16	3 13/16
112's	3 5/16	3 11/16
125's	3 3/16	3 9/16
163's	2 15/16	3 5/16
200's	2 11/16	3 1/16
252's	2 7/16	2 12/16
288's	2 4/16	2 9/16
324's	2 3/16	2 8/16

Table II (Section 906.340(a)(2)(i)(c))

TABLE II—NAVELS, VALENCIA AND SIMILAR LATE-TYPE ORANGES

[1 2/5 bushel box]

Pack size	Diameter in inches	
	Minimum	Maximum
46	4 3/16	5
54	4	4 12/16

TABLE II—NAVELS, VALENCIA AND SIMILAR LATE-TYPE ORANGES—Continued

[1 2/5 bushel box]

Pack size	Diameter in inches	
	Minimum	Maximum
64	3 13/16	4 8/16
70 or 72	3 11/16	4 5/16
80	3 8/16	4 2/16
100	3 5/16	3 13/16
112	3 3/16	3 11/16
125	3 1/16	3 9/16
163	2 13/16	3 5/16
200	2 9/16	3 1/16
252	2 5/16	2 12/16
288	2 2/16	2 9/16

All oranges must have been at least Pack Size 288, except that the minimum diameter limit for Pack Size 288 oranges in any lot was 2 6/16 inches.

The Committee recommended changing the orange pack sizes to the pack sizes used by the California citrus industry. A study by the Committee indicated that approximately 39 percent of Texas oranges are sold in Texas, and about 36 percent in California. Almost 90 percent of Texas oranges are marketed west of the Mississippi River. California dominates the western domestic orange market with fruit available on a year-round basis. Texas, on the other hand, is a relatively small producer of oranges with a marketing season from late September through May. Previously, the pack sizes for California oranges were different from those for Texas oranges. Furthermore, as mentioned before, Texas previously had two orange size tables—one for Navels, Valencia, and similar late-type oranges, and another for all other varieties.

Since California dominates the orange market, produce buyers are much more familiar with California orange pack sizes than pack sizes previously used by the Texas citrus industry. Buyers' computers tended to have California pack sizes listed, but not Texas'. This put handlers of Texas oranges at a competitive disadvantage. Further, Texas did not previously pack a size 138 orange because this size was not a specified pack size. The closest Texas sizes were 126 and 144. As a result, the Texas orange industry could not take advantage of size 138 business.

Moreover, retailers, wholesalers, food service distributors, and brokers were much more familiar with California orange pack sizes than Texas orange pack sizes because California ships a much larger volume and is present in the marketplace year-round. Having pack sizes different from California's was a marketing problem that affected all producers and handlers and caused the Texas industry to lose fresh orange sales. The Committee believed that the Texas pack sizes needed to be more closely aligned with the California pack sizes. In addition to the pack sizes used by the California industry, the Committee recommended a pack size 64, presently a very popular size for the Texas industry, ranging from a minimum diameter of 2 11/16 inches to a maximum of 3 10/16 inches.

The Committee unanimously recommended orange pack sizes ranging from pack size 24 to 138 with minimum and maximum diameters based on the 7/10 bushel carton and the actual number of fruit in that size carton, as shown in the following table:

ORANGES

[7/10 BUSHEL CARTON]

Pack size/ number of oranges	Diameter in inches	
	Minimum	Maximum
24	3 12/16	5 1/16
32	3 6/16	4 9/16
36	3 4/16	4 6/16
40	3 2/16	4 4/16
48	2 15/16	4
56	2 13/16	3 13/16
64	2 11/16	3 10/16
72	2 9/16	3 8/16
88	2 8/16	3 4/16
113	2 7/16	3
138	2 6/16	2 12/16

Previously, Texas had minimum and maximum orange size diameters in inches and fractions of an inch for each pack size based on the 1 2/5 bushel box. The Committee recommended changes to the minimum and maximum diameter size ranges for the proposed pack sizes to a 7/10 bushel carton basis as shown in the foregoing table because 1 2/5 bushel boxes were no longer used by the industry.

Adopting the California orange pack sizes for all varieties of oranges eliminated the two separate pack size tables previously in the orange pack regulations. Separate tables for different varieties of oranges had been established to allow for varietal size differences. Some varieties tend to be round and others slightly oblong, and older mechanical fruit sizing equipment could not accurately size the differently shaped fruit. Present day mechanical fruit sizers, however, accurately size all varieties of oranges regardless of shape, and two separate pack size tables for different orange varieties were no longer necessary.

Language was added to clarify that if 7/10 bushel containers of oranges are marked, the count of fruit in each

container shall not be less than the count marked on the container, but may exceed the count marked on the container by not more than 8 percent. The 8 percent tolerance is used in California. When packed in marked containers other than the 7/10 bushel, the pack sizes applicable to 7/10 bushel containers shall also apply to such containers.

Replace References to the 1 2/5 Bushel Box With a 7/10 Bushel Carton

As discussed earlier, the Texas orange and grapefruit regulations previously referred to a 1 2/5 bushel box. The 1 2/5 bushel box was a carryover from past years when fruit was packed in a wooden ''Bruce'' box, which is twice the size of the common 7/10 bushel carton presently used in commercial business. The Committee recommended changing all references to the 1 2/5 bushel box to a 7/10 bushel carton. References to the 1 2/5 bushel box and associated fruit pack sizes based on that container were confusing to the industry. All weekly Committee utilization reports, annual reports, and other documents reference the 7/10 bushel carton equivalent. With the elimination of the 1 2/5 bushel box, the orange pack sizes are in accordance with the count in a 7/10 bushel carton.

The 7/10 bushel carton equivalent and fruit count per carton is now the accepted unit of measure for oranges and grapefruit within the Texas industry. Handlers actually pack as to count of fruit in the box. Eliminating all references to the 1 2/5 bushel box and related pack sizes minimizes confusion among all producers and handlers.

Changes to the Pack Requirements for Grapefruit

Section 906.340(a)(2)(ii) specifies pack requirements for grapefruit based upon the United States Standards for Grades of Grapefruit (Texas and States other than Florida, California, and Arizona), hereinafter referred to as the ''grapefruit standards'', with some exceptions. Grapefruit was previously required to be packed within the diameter limits specified for the various pack sizes defined in 7 CFR 51.630(c) of the grapefruit standards, based on a 1 2/5 bushel box. Exceptions were that the minimum diameter limit for pack size 96 grapefruit was 3 9/16 inches, and for pack size 112 grapefruit, the minimum diameter was 3 5/16 inches. The standard pack and standard sizing requirements, and packing tolerances remain unchanged.

The grapefruit standards define eight pack sizes. The smallest is size 125/126, which ranges from a minimum of 3 inches to a maximum of 3 8/16 inches in diameter. The largest is size 46 which ranges from 4 5/16 to 5 inches in diameter. The Texas grapefruit pack regulations included a size 36 grapefruit, which ranged from 4 15/16 to 5 9/16 inches in diameter. This pack size was not in the grapefruit standards. The minimum diameters for pack sizes 96 and 112 were different from those specified in the grapefruit standards. The grapefruit standards specify 3 6/16 inches and 3 2/16 inches, and the order requirements specify 3 9/16 inches and 3 5/16 inches, respectively. The maximum diameters are the same.

The Committee recommended revising the grapefruit pack sizes based on a 7/10 bushel carton, as shown in the following table, rather than the 1 2/5 bushel box, which was obsolete and confusing. As mentioned earlier, the Texas citrus industry for many years had used the 7/10 bushel carton as its standard shipping container. Previously, any reference to a 1 2/5 bushel of fruit had to be converted to 7/10 bushel equivalents. With the elimination of the 1 2/5 bushel box, grapefruit pack sizes reference the number of grapefruit that will pack in a 7/10 bushel carton.

GRAPEFRUIT

[7/10 bushel carton]

Pack size/number of grapefruit	Diameter in inches	
	Minimum	Maximum
18(36)	4 15/16	5 9/16
23(46)	4 5/16	5
27(54/56)	4 2/16	4 12/16
32(64)	3 15/16	4 8/16
36(70/72)	3 13/16	4 5/16
40(80)	3 10/16	4 2/16
48(96)	3 9/16	3 14/16
56(112/113)	3 5/16	3 10/16

(Numbers in parentheses represent previous pack sizes.) Minimum and maximum diameter ranges for the new pack sizes (not in parentheses) are the same as currently specified.

Language was also added by the interim final rule to clarify that if 7/10 bushel containers of grapefruit are marked, the count of fruit in the container shall not be less than the count marked on the container, but may exceed the count marked on the container by not more than 8 percent. The 8 percent tolerance is used in California. When packed in marked containers other than 7/10 bushel, the pack sizes applicable to 7/10 bushel containers shall also apply to such containers.

Conforming Changes to the Size Regulations

Changing the orange pack sizes and minimum and maximum diameter size ranges required conforming changes to the size regulations for oranges in § 906.365(a)(2). The minimum size which may be packed changed from pack size 288 to the new pack size 138, but the minimum size permitted remained 2 6/16 inch minimum diameter.

Changing the grapefruit pack sizes from a 1 2/5 bushel box basis to pack sizes based on the 7/10 bushel carton also required conforming changes to the grapefruit size regulations in § 906.365(a)(4). The minimum pack size changed from pack size 96 to pack size 48, but the minimum diameter permitted to be shipped remained 3 9/16 inches. A reference to the previous pack size 112 in § 906.365(a)(4) was changed to pack size 56. That paragraph provides that pack size 56 grapefruit (with a minimum diameter of 3 5/16 inches) may be packed and shipped if the fruit grades at least U.S. No. 1.

Final Regulatory Flexibility Analysis

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

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

There are approximately 315 producers of oranges and grapefruit in the production area and 16 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts less than $500,000 and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Texas orange and grapefruit producers and handlers may be classified as small entities.

Last year, 5 of the 16 handlers (31 percent) each shipped over 625,000 7/10 bushel cartons of oranges and grapefruit. Using an average f.o.b. price of $8.00 per carton, these handlers could be considered large businesses by the SBA, and the remaining 11 handlers (69 percent) could be considered small businesses. Of the approximately 315 producers within the production area, few have sufficient acreage to generate

sales in excess of $500,000; therefore, a majority of producers of Texas oranges and grapefruit may be classified as small entities.

Many producers are still recovering from the 1983 and 1989 devastating freezes that virtually destroyed the Texas citrus industry. Most trees in the production area were planted within the past ten years and have not yet reached full maturity. As a result, yields are still somewhat low and the profit to the producers is marginal. The 1998–99 season grapefruit and orange production levels were 59 percent and 36 percent of the pre-1983 freeze levels.

This rule continues in effect the changes to the orange and grapefruit pack sizes currently prescribed under the order to pack sizes based upon the actual number of fruit packed in a 7/10 bushel carton. It also more closely aligns the pack sizes for Texas oranges to those used by shippers of oranges grown in California. Conforming changes were also made to the pack size references in the size regulations for oranges and grapefruit so the minimum sizes permitted to be shipped remain the same as previously specified.

The Grade and Size Subcommittee met on April 20 and 29, and May 4, 1999, and discussed changes to the order's pack requirements. At a meeting on May 13, 1999, the Subcommittee recommended and the Committee unanimously approved changes to the regulations. On July 1, 1999, the Committee met again and unanimously recommended the following changes to the orange and grapefruit pack and conforming changes to the size regulations:

(1) Eliminate two separate pack size tables for different orange varieties and establish one table for all orange varieties, change the pack sizes to a 7/10 bushel carton basis for all orange varieties consistent with California pack sizes (the Texas pack sizes previously were based on 1 2/5 bushel boxes), and add a pack size 64 not specified in the California sizes. The new pack size table includes pack sizes for all orange varieties ranging from pack size 24 to 138, and each pack size has minimum and maximum diameter ranges;

(2) Change the grapefruit pack sizes based on a 1 2/5 bushel box to pack sizes based upon the actual number of fruit packed in the 7/10 bushel carton; and

(3) Make conforming changes to the size regulations based on the above recommendations.

Under the terms of the order, fresh market shipments of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas are required to be inspected and meet grade, size, container, and pack requirements. Section 906.40 authorizes the issuance of pack regulations. Section 906.340(a)(2) of the order's rules and regulations outlines pack requirements for fresh shipments of Texas oranges and grapefruit. Size requirements are specified under § 906.365.

Changes to the Pack Requirements for Oranges

Section 906.340(a)(2)(i) specifies pack requirements for oranges and previously included two tables with pack sizes and minimum and maximum diameter size ranges for different varieties of oranges. These requirements provided, among other things, that oranges be packed in accordance with certain minimum and maximum diameters.

Previously, oranges were divided into two categories for the purpose of pack regulations: (1) Navel, Valencia, and similar late-type oranges, and (2) all other varieties of oranges. All types of oranges were to be packed in accordance with 13 pack sizes. The minimum diameters for Navel, Valencia, and similar late-type oranges for each of the pack sizes were 2/16 inch smaller than those specified for all other oranges, while the maximum diameters for all varieties of oranges in the 13 pack sizes were the same. The minimum diameter, however, for all oranges was pack size 288 with a minimum diameter limit of 2 6/16 inches.

The previous orange pack sizes and minimum and maximum diameters are shown in the following tables:

Table I (Section 906.304 (a)(2)(i)(a))

TABLE I.—ALL ORANGES, EXCEPT NAVELS, VALENCIAS, AND SIMILAR LATE-TYPE ORANGES

[1 2/5 bushel box]

Pack Size	Diameter in inches	
	Minimum	Maximum
46's	4 5/16	5
54's or 56's	4 2/16	4 12/16
64's	3 15/16	4 8/16
70's or 72's	3 13/16	4 5/16
80's	3 10/16	4 2/16
100's	3 7/16	3 13/16
112's	3 5/16	3 11/16
125's	3 3/16	3 9/16
163's	2 15/16	3 5/16
200's	2 11/16	3 1/16
252's	2 7/16	2 12/16
288's	2 4/16	2 9/16
324's	2 3/16	2 8/16

Table II (Section 906.340 (a)(2)(i)(c))

TABLE II.—NAVELS, VALENCIA, AND SIMILAR LATE-TYPE ORANGES

[1 2/5 bushel box]

Pack Size	Diameter in inches	
	Minimum	Maximum
46	4 3/16	5
54	4	4 12/16
64	3 13/16	4 8/16
70 or 72	3 11/16	4 5/16
80	3 8/16	4 2/16
100	3 5/16	3 13/16
112	3 3/16	3 11/16
125	3 1/16	3 9/16
163	2 13/16	3 5/16
200	2 9/16	3 1/16
252	2 5/16	2 12/16
288	2 2/16	2 9/16

All oranges had to be at least Pack Size 288, except that the minimum diameter limit for Pack Size 288 oranges in any lot was 2 6/16 inches.

The Committee recommended changing the orange pack sizes to the pack sizes used by the California citrus industry. A study by the Committee indicated that approximately 39 percent of Texas oranges are sold in Texas, and about 36 percent in California. Almost 90 percent is marketed west of the Mississippi River. California dominates the western domestic orange market with fruit available on a year-round basis. Texas, on the other hand, is a relatively small producer of oranges with a marketing season from late September through May. Previously, oranges from California were sized differently from oranges available from Texas. Furthermore, as mentioned before, Texas had two orange size tables—one for Navels, Valencia, and similar late-type oranges, and another for all other varieties.

Since California dominates the orange market, produce buyers are much more familiar with California orange pack sizes than pack sizes previously used by the Texas citrus industry. Buyers' computers tended to have California pack sizes listed, but not Texas'. This put handlers of Texas oranges at a competitive disadvantage. Further, Texas did not previously pack a size 138 orange. The closest Texas sizes were 126 and 144. As a result, the Texas orange industry could not supply buyers interested in purchasing size 138.

Retailers, wholesalers, food service distributors, and brokers were much more familiar with California orange pack sizes than Texas orange pack sizes because California ships a much larger volume and is present in the marketplace year-round. Having pack

sizes different from California's was a marketing problem that affected all producers and handlers and caused the Texas industry to lose fresh orange sales. The Committee believed that the pack sizes for Texas should be similar to those used by California shippers. In addition to the pack sizes used by the California industry, the Committee recommended a pack size 64, presently a very popular size for the Texas industry, ranging from a minimum diameter of 2 11/16 inches to a maximum of 3 10/16 inches.

The Committee unanimously recommended orange pack sizes ranging from pack size 24 to 138 with minimum and maximum diameters based on the 7/10 bushel carton, which refer to the actual number of fruit in the carton as shown in the following table:

ORANGES

[7/10 bushel carton]

Pack size/number of grapefruit	Diameter in Inches	
	Minimum	Maximum
24	3 12/16	5 1/16
32	3 6/16	4 9/16
36	3 4/16	4 6/16
40	3 2/16	4 4/16
48	2 15/16	4
56	2 13/16	3 13/16
64	2 11/16	3 10/16
72	2 9/16	3 8/16
88	2 8/16	3 4/16
113	2 7/16	3
138	2 6/16	2 12/16

Previously, Texas had minimum and maximum orange diameters size ranges in inches and fractions of an inch for each pack size. The Committee recommended changes to the minimum and maximum diameters for the pack sizes to a 7/10 bushel carton basis as shown in the foregoing table.

Adopting the California orange pack sizes for all varieties of oranges eliminated the two separate pack size tables previously in the orange pack regulations. The separate tables for different varieties of oranges had been established to allow for varietal size differences. Some varieties tend to be round and others slightly oblong, which caused problems with older mechanical sizing equipment. Present day mechanical fruit sizing equipment, however, accurately sizes all varieties of oranges and two separate pack size tables for different orange varieties were no longer necessary.

For purposes of clarity, language was added under Table I indicating that if 7/10 bushel containers of oranges are marked, the count of fruit in each container shall not be less than the count marked on the container, but may exceed the count marked on the container by not more than 8 percent. The 8 percent tolerance is used in California. When packed in marked containers other than 7/10 bushel, the pack sizes applicable to 7/10 bushel containers shall also apply to such containers.

Replace References to the 1 2/5 Bushel Box with a 7/10 Bushel Carton

The previous Texas orange and grapefruit pack size regulations referred to a 1 2/5 bushel box. The 1 2/5 bushel box was a carryover from past years when fruit was packed in a wooden ''Bruce'' box, which is twice the size of the common 7/10 bushel carton presently used in commercial business. The Committee recommended changing all references to the 1 2/5 bushel box to a 7/10 bushel carton. References to the 1 2/5 bushel box and associated fruit pack sizes based on that container were confusing to the industry. All weekly Committee utilization reports, annual reports, and other documents reference the 7/10 bushel carton or equivalent. With the elimination of the 1 2/5 bushel box, the orange pack sizes are in accordance with the count in a 7/10 bushel carton.

The 7/10 bushel carton and fruit count per carton is now the accepted standard for oranges and grapefruit within the Texas industry. Handlers currently pack as to the count of fruit in the box. Eliminating all references to the 1 2/5 bushel box and related pack sizes minimizes confusion among all producers and handlers.

Changes to the Pack Requirements for Grapefruit

Section 906.340(a)(2) also provides pack requirements for grapefruit based upon the United States Standards for Grades of Grapefruit (Texas and States other than Florida, California, and Arizona), with some exceptions. Grapefruit was previously required to be packed within the diameter limits specified for the various pack sizes defined in 7 CFR 51.630(c) of the United States Standards for Grades of Grapefruit (Texas and States other than Florida, California, and Arizona), hereinafter referred to as the ''grapefruit standards'', based on a 1 2/5 bushel box. The standard pack and standard sizing requirements, and packing tolerances remain unchanged.

The grapefruit standards define eight pack sizes. The smallest is size 125/126, which ranges from a minimum of 3 inches to a maximum of 3 8/16 inches in diameter. The largest is size 46 which ranges from 4 5/16 to 5 inches in diameter. The Texas grapefruit pack regulations also included a size 36 grapefruit, which ranged from 4 5/16 to 5 9/16 inches in diameter. The minimum diameters for pack sizes 96 and 112 were modified from 3 6/16 inches and 3 2/16 inches as specified in the grapefruit standards to 3 9/16 and 3 5/16 inches, respectively, and these exceptions continue in effect.

The Committee recommended revising the grapefruit pack sizes based on a 7/10 bushel carton, as shown in the following table, rather than the 1 2/5 bushel box, because the latter basis was obsolete and confusing. The Texas citrus industry for many years used the 7/10 bushel carton as the standard. Previously, any reference to a 1 2/5 bushel of fruit had to be converted to 7/10 bushel equivalents. With the elimination of the 1 2/5 bushel box, grapefruit pack sizes reference the number of grapefruit that will pack in a 7/10 bushel carton.

GRAPEFRUIT

[7/10 bushel carton]

Pack size/number of grapefruit	Diameter in inches	
	Minimum	Maximum
18 (36)	4 15/16	5 9/16
23 (46)	4 5/16	5
27 (54/56)	4 2/16	4 12/16
32 (64)	3 15/16	4 8/16
36 (70/72)	3 13/16	4 5/16
40 (80)	3 10/16	4 2/16
48 (96)	3 9/16	3 14/16
56 (112/113)	3 5/16	3 10/16

(Numbers in parentheses represent previous pack sizes.) Minimum and maximum diameter size ranges for the new pack sizes remain the same as previously specified.

For purposes of clarity, language was added after Table II specifying that if 7/10 bushel containers of grapefruit are marked, the count of fruit in the container shall not be less than the count marked on the container, but may exceed the count marked on the container by not more than 8 percent. The 8 percent tolerance is used in California. When packed in marked containers other than 7/10 bushel, the pack sizes applicable to 7/10 bushel containers shall also apply to such containers.

Conforming Changes to the Size Regulations

Changing the orange pack sizes and minimum and maximum diameter size ranges required conforming changes to the size regulations for oranges in § 906.365(a)(2). The minimum size which may be packed changed from pack size 288 to the new pack size 138,

but the minimum diameter permitted to be shipped remained 2 6/16 inches.

Changing the grapefruit pack sizes from a 1 2/5 bushel box basis to pack sizes based on the 7/10 bushel carton also required conforming changes to the grapefruit size regulations in § 906.365(a)(4). The minimum pack size changed from pack size 96 to pack size 48, but the minimum diameter permitted to be shipped remained 3 9/16 inches. A reference to the previous pack size 112 in § 906.365(a)(4) was changed to pack size 56. That paragraph provides that pack size 56 grapefruit (with a minimum diameter of 3 5/16 inches) may be packed and shipped if the fruit grades at least U.S. No. 1.

The Committee concluded that leaving the pack sizes as they previously were could cause the Texas citrus industry to lose fresh orange sales. The pack size changes are expected to result in increased sales, but the amount of increase cannot be determined precisely.

Eliminating the references to the 1 2/5 bushel box in the regulations does not have any effect upon producer returns or sales. It simply eliminated an antiquated unit of measure from the regulations, prevents confusion, and eliminates the need for converting 1 2/5 bushel box references to the standard 7/10 bushel carton.

Changing the grapefruit pack sizes consistent with the changes being recommended in the orange pack sizes prevents confusion in the industry. The industry, both sellers and buyers, currently refer to the size of grapefruit (and oranges) by the number of fruit packed in a 7/10 bushel carton. The changes made by this action reflect this industry practice.

The opportunities and benefits of these changes are expected to be equally available to all Texas citrus producers and handlers regardless of their size of operation. The changes offer benefits to the entire Texas citrus industry. The changes enable handlers to compete more effectively in the marketplace. They also contribute to the industry's long-term objective to market as much citrus as possible. These regulation changes are expected to lead to market expansion, which benefits producers, handlers, buyers, and consumers of Texas citrus. Accordingly, in assessing alternatives to the changes provided in the interim final rule, this final action continues to provide the most beneficial results.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large orange and grapefruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meetings were widely publicized throughout the Texas orange and grapefruit industry and all interested persons were invited to attend the meetings and participate in Committee deliberations. Like all Committee meetings, the May 13, 1999, and July 1, 1999, meetings were public meetings and all entities, both large and small, were able to express their views on this issue.

Also, the Committee has a number of appointed subcommittees to review certain issues and make recommendations to the Committee. The Committee's Grade and Size Subcommittee met on April 20, April 29, and May 4, 1999, and discussed this issue in detail. Those meetings were also public meetings and both large and small entities were able to participate and express their views.

An interim final rule concerning this action was published in the **Federal Register** on August 31, 1999. The Committee's staff mailed copies of the rule to all Committee members and orange and grapefruit handlers and producers. In addition, the Office of the Federal Register made the rule available through the Internet. That rule provided for a 60-day comment period which ended November 1, 1999. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (64 FR 47349, August 31, 1999) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements.

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

Accordingly, the interim final rule amending 7 CFR part 906 which was published at 64 FR 47349 on August 31, 1999, is adopted as a final rule without change.

Dated: December 8, 1999.

James R. Frazier,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–32229 Filed 12–10–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 915

[Docket No. FV00–915–1 IFR]

Avocados Grown in South Florida; Relaxation of Container and Pack Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule changes the container and pack requirements currently prescribed under the Florida avocado marketing order. The marketing order regulates the handling of avocados grown in South Florida and is administered locally by the Avocado Administrative Committee (Committee). Currently, avocados packed in 33-pound containers must weigh at least 16 ounces. Avocados weighing less than 16 ounces must be packed in smaller containers. This rule removes the requirement that avocados packed in 33-pound containers must weigh at least 16 ounces. This change will provide greater flexibility in avocado packing operations.

DATES: Effective December 14, 1999; comments received by February 11, 2000 will be considered prior to issuance of a final rule.

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

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist, Southeast Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883; telephone: (863) 299–4770, Fax: (863) 299–5169; or Anne Dec, Team Leader, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 121 and Marketing Order No. 915, both as amended (7 CFR part 915), regulating the handling of avocados grown in South Florida, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

Under the terms of the order, fresh market shipments of Florida avocados are required to be inspected and are subject to grade, size, maturity, and pack and container requirements. Current pack and container requirements outline the designated net weight of the containers used to pack avocados and the minimum weight of the avocados packed in the containers.

This rule removes the requirement that avocados packed in 33-pound containers must weigh at least 16 ounces. This change will provide greater flexibility in avocado packing operations. The Committee met on September 8, 1999, and unanimously recommended this change.

Section 915.51 of the order provides authority to issue regulations establishing specific pack and container requirements. Section 915.52 further authorizes the Committee to make recommendations to the Secretary to modify, suspend, or terminate regulations, including pack and container requirements. The pack and container requirements are specified under sections 915.305 and 915.306. These sections specify, in part, container weight and other applicable requirements, including the minimum weight of the avocados packed in the containers. Current regulations authorize the use of 33-pound, 31-pound, 24-pound, and 12-pound containers, and 8.5-pound containers for export shipments only.

The requirements of Section 915.305(a)(1) currently specify that avocados packed in 33-pound containers must weigh at least 16 ounces. Avocados weighing less than 16 ounces must be packed in smaller containers. The Committee has determined that retailers prefer shipments of avocados packed in larger containers. The size of the fruit is not a concern to retailers. By allowing smaller fruit to be packed in the larger containers, the retailer is able to offer avocados to the consumer in a variety of sizes. The larger containers are ideal for displaying the fruit. Upon receipt of the avocado shipment, the retailer can remove the lid from the larger container. Without removing the fruit from the box, fruit can be offered for consumers to purchase. This is time saving for retailers.

Removing the requirement that avocados packed in 33-pound containers weigh at least 16 ounces would give handlers the flexibility to pack both large and small avocados in one container. California avocado handlers have already adopted the practice of shipping smaller avocados in larger containers with a great deal of success. Florida avocado handlers would like to remain competitive with other avocado growing areas. In order to meet the needs of the customer and remain competitive with other avocado handlers, this rule removes the requirement that avocados packed in 33-pound containers must weigh at least 16 ounces. The avocados must meet all other requirements of the marketing order, including maturity requirements.

In addition, the flexibility to pack both large and small avocados in one container would allow handlers to use the smaller avocados to create a tighter pack with less open space inside the containers. The tighter pack would restrict movement of the avocados during shipment which would prevent damage to the fruit. This would improve the quality of the fruit reaching the consumer, save handling costs, and provide greater returns to the grower.

Section 8e of the Act provides that when certain domestically produced commodities, including avocados, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. This rule changes the pack and container requirements currently in effect which do not apply to imports. Therefore, no change is necessary in the avocado import regulations.

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

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

There are approximately 141 avocado producers in the production area and approximately 49 avocado handlers subject to regulation under the marketing order. Small agricultural service firms have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

The average price for fresh avocados during the 1997–98 season was $14.60 per 55 pound bushel box equivalent for all domestic shipments and the total shipments were 937,568 bushels. Many avocado handlers ship other tropical fruit and vegetable products which are not included in the Committee's data but would contribute further to handler receipts. Using these prices, about 90 percent of avocado handlers could be considered small businesses under the SBA definition. The majority of Florida avocado producers and handlers may be classified as small entities.

Under sections 915.51 and 915.52 of the marketing order for avocados grown in South Florida, the Committee has the authority to recommend to the Secretary changes to the pack and container requirements for avocados handled under the order. Current pack and container requirements outline the designated net weight of the containers used to pack avocados and the minimum weight of the avocados packed in the containers. Current regulations authorize the use of 33-pound, 31-pound, 24-pound, and 12-pound containers, and 8.5-pound containers for export shipments only.

This rule makes changes to section 915.305(a)(1) of the rules and regulations concerning the pack and container requirements for avocados. This rule removes the requirement that avocados packed in 33-pound containers must weigh at least 16 ounces. The avocados must meet all other requirements, including maturity requirements. This change will provide greater flexibility in avocado packing operations.

This rule will have a positive impact on affected entities. The change was recommended to provide additional flexibility in packing avocados. None of the changes are expected to increase costs associated with the pack and container requirements. This rule may, in fact, reduce costs associated with the pack and container requirements.

The Committee believes this change will benefit both large and small packing operations. It would be particularly beneficial to small handlers since a single container can be used to ship avocados to retail customers. This would reduce the need to maintain a large inventory of smaller containers. Further, the Committee has determined that retailers prefer the larger containers; the size of the fruit in those containers is of lesser concern to the retailer. By allowing smaller fruit to be packing in the larger containers, the retailer is able to offer avocados to the consumer in a variety of sizes. The larger containers are ideal for displaying the fruit. Upon receipt of the avocado shipment, the retailer can remove the lid from the larger container. Without removing the fruit from the box, fruit can be offered for consumers to purchase. This is time saving for retailers.

Removing the requirement that avocados packed in 33-pound containers weigh at least 16 ounces would give handlers the flexibility to pack both large and small avocados in one container. Florida avocado handlers would like to remain competitive with other avocado growing areas. For example, California avocado handlers have already adopted the practice of shipping smaller avocados in larger containers with a great deal of success. In order to meet the needs of the customer and remain competitive with other avocado handlers, this rule removes the requirement that avocados packed in 33-pound containers must weigh at least 16 ounces. The avocados must meet all other requirements of the marketing order, including maturity requirement.

In addition, the flexibility to pack both large and small avocados in one container would allow handlers to use the smaller avocados to create a tighter pack with less open space inside the containers. The tighter pack would restrict movement of the avocados during shipment which would prevent damage to the fruit. This would save handling costs and provide greater returns to the grower.

Other alternatives to the action were considered by the Committee prior to making the recommendation. One alternative discussed by the Committee was to continue to require that avocados packed in 33-pound containers weigh at least 16 ounces. The Committee believed that this alternative provided little benefit and would still limit flexibility.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large avocado handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the avocado industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the September 8, 1999, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Committee itself is composed of 10 members, of which 5 are growers, 4 are handlers, and one is a public member. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and speciality crop marketing agreements and orders may be viewed at the following website: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This rule invites comments on a change to the pack and container requirements currently prescribed under the Florida avocado marketing order. Any comments timely received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) Handlers are currently shipping avocados; (2) the Committee unanimously recommended this change at a public meeting and interested persons had an opportunity to provide input; (3) this rule relaxes pack requirements; (4) Florida avocado handlers are aware of this rule and need no additional time to comply with the relaxed requirements; and (5) this rule provides a 60-day comment period and any comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 915 is amended as follows:

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR part 915 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 915.305, paragraph (a)(1) is revised to read as follows:

§ 915.305 Florida Avocado Container Regulation 5.

(a) * * *

(1) Containers shall not contain less that 33-pounds net weight of avocados, except that for avocados of unnamed varieties, which are avocados than have not been given varietal names, and for Booth 1, Fuchs, and Trapp varieties, such weight shall be not less than 31 pounds. With respect to each lot of such containers, not to exceed 10 percent, by count, of the individual containers in the lot may fail to meet the applicable specified weight, but no container in such lot may contain a net weight of avocados exceeding 2 pounds less than the specified net weight; or

* * * * *

Dated: December 8, 1999.

James R. Frazier,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–32230 Filed 12–10–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM166; Special Conditions No. 25–155–SC]

Special Conditions: CASA Model C–295 Airplane; Automatic Takeoff Thrust Control System

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final Special Conditions; request for comments.

SUMMARY: This notice proposes special conditions for the CASA Model C–295 airplane. This airplane will have an unusual design feature associated with an Automatic Takeoff Thrust Control System (ATTCS), for which the applicable airworthiness regulations do not contain appropriate safety standards for approach climb performance using an ATTCS. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is November 30, 1999. Comments must be received on or before January 12, 2000.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn.: Rules Docket (ANM–114), Docket No. NM166, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked ''Docket No. NM166.'' Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Rosanne Ryburn, International Branch (ANM–116), FAA Transport Airplane Directorate, 1601 Lind Avenue SW, Renton, WA 98055–4056, telephone (425) 227–2139, or facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. NM166.'' The postcard will be date stamped and returned to the commenter.

Background

On March 13, 1997, Construcciones Aeronauticas, S.A. (CASA), located in Getafe, Spain, applied to the FAA for an amendment to Type Certificate No. A21NM in the transport airplane category for the Model C–295 airplane. CASA Model C–295 is a derivative of the Model CN–235 currently approved under Type Certificate No. A21NM. The CASA Model C–295 is a medium-sized airplane powered by two Pratt & Whitney Canada PW127G turbopropeller engines mounted on the wings. Each engine is equipped with a Hamilton Standard Model 568F–5 six-blade propeller and will be capable of delivering 2,645 shaft horsepower (SHP) at the normal takeoff power setting. The airplane will be capable of operation with a minimum of 2 flight crewmembers and cargo.

CASA Model C–295 will incorporate an unusual design feature, an ''Autofeather/Automatic Power Reserve'' (AF/APR) system, to show compliance with the engine failure takeoff path requirements of part 25 and the approach climb requirements of § 25.121(d). The functional intent of this AF/APR system is the same as the Automatic Takeoff Thrust Control System (ATTCS) described in Appendix I to part 25, which limits the application of performance credit for such a system to takeoff only. Since the airworthiness regulations do not contain appropriate safety standards for approach climb performance using ATTCS, special conditions are required to ensure a level of safety equivalent to that established in the regulations.

Type Certification Basis

Under the provisions of 14 CFR 21.101, CASA must show that the Model C–295 meets the applicable provisions incorporated by reference in Type Certificate No. A21NM or the applicable regulations in effect on the date of application for the change to the Model C–295.

The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate A21NM are as follows: part 25, effective February 1, 1965, including Amendments 25–1 through 25–89. The certification basis may also include later amendments to part 25 that are not relevant to these special conditions. In addition, the certification basis for the Model C–295 includes part 34, effective September 10, 1990, including

Amendment 34–3 effective February 3, 1999, plus any amendments in effect at the time of certification; and part 36, effective December 1, 1969, including Amendments 36–1 through 36–21 and any subsequent amendments that may be applicable on the date the type certificate is issued. These special conditions form an additional part of the type certification basis. In addition, the certification basis may include other special conditions that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25, as amended) do not contain adequate or appropriate safety standards for the CASA Model C–295 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model C–295 must comply with the part 25 fuel vent and exhaust emission requirements of 14 CFR part 34 and the part 25 noise certification requirements of 14 CFR part 36.

Special conditions, as appropriate, are issued in accordance with § 11.49, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Model C–295 will incorporate the following novel or unusual design feature: the ATTCS (referred to by CASA as ''Autofeather/APR''), to show compliance with the approach climb requirements of § 25.121(d). The Model C–295 is a medium-sized airplane powered by two Pratt & Whitney Canada PW127G turbopropeller engines equipped with Electronic Engine Controls (EEC) that, in part, protect against exceeding engine limits. The Model C–295 is also equipped with Hamilton Standard 568F–5 six-blade propellers as part of the propulsion package. The Model C–295 engine and propeller control system allows the pilot to select an Autofeather/APR control position on the overhead panel that will, in the result of an engine failure, automatically feather the propeller on the failed engine and increase the power output of the operating engine to the Maximum Takeoff Power (MTOP) setting (2,920 SHP at sea level).

The Model C–295 incorporates a power setting system that includes a center pedestal-mounted rotary switch, referred to as the Power Rating Selector (PRS), that allows the pilot to select the desired torque and propeller speed combination for the phase of flight. After selecting the appropriate position on the PRS, the corresponding level of thrust is obtained by moving a single Power Lever (PL) for each engine to a detent position that is referred to as MAX AUTO.

With the PRS set to the takeoff and go-around (TOGA) position, the power levers in the MAX AUTO position, and the AF/APR selected to the ON position, the applicable one-engine-inoperative performance requirements of part 25 will be met without requiring any action by the crew to increase power.

For takeoff, the PRS is set to TOGA and the power levers are advanced to MAX AUTO, resulting in Normal Takeoff Power (NTOP) being obtained, which is 90 percent of the Maximum Takeoff Power (MTOP) available. In the event of an engine failure during takeoff, operation of the Model C–295 AF/APR system will result in the EEC automatically increasing the power on the operating engine to Maximum Takeoff Power (MTOP). (Note that for this engine installation, the MTOP level of power automatically obtained with AF/APR operation may be manually obtained by placing the PRS in the Maximum Continuous Power (MCT) position and the power levers at MAX AUTO (maximum takeoff and maximum continuous power ratings and limits are the same)). Similarly, if both engines are operating when the approach is initiated, the AF/APR and power setting controls must be set to the same positions as for takeoff to ensure obtaining the approach climb (ref. § 25.121(d)) performance presented in the Airplane Flight Manual (AFM) in the event of an engine failure during the approach or go-around.

For both the takeoff and go-around case, the operating procedures require the flightcrew to turn the system on by pressing the ''ARM/ON'' button on the overhead panel; this will result in the ''ON'' portion of the button remaining illuminated. When Autofeather/APR is selected ON, the PRS is set to TOGA, and both power levers are beyond 49 degrees with both engines producing power above the 48 percent Torque (%TQ) level, the ''ARM'' portion of the button will illuminate. This will indicate to the pilot that the system is ''armed'' and will perform autofeather and power increase functions without any further action by the crew if an engine fails. If one engine fails after initiating a go-around, before the 48 percent TQ level is reached, the APR/Autofeather system will not function.

The engine operating limits Torque (%TQ), Inter-Turbine Temperature (ITT), Engine RPM (%NH), and Propeller RPMs (%NP) are set such that the engine red line limits are not exceeded when the APR system operates.

If the torque on one engine drops below 19 percent, the Autofeather Unit (AFU) on the failed engine sends a signal to increase the power to the MTOP/MCT level on the remaining engine. The power levers will continue to function normally should the ATTCS fail. The MTOP can also be obtained by selecting the MCT position at the Power Rating Selector.

To deactivate the power increase provided by operation of the APR system, the power levers should be moved out of the MAX AUTO detent to a position less than 49 degrees (PL angle not high) or the Autofeather/APR should be selected OFF.

For both the takeoff and approach power setting cases, the power levers may be pushed forward beyond the MAX AUTO position to the MAX MANUAL position. This will result in the engines producing slightly more power than MTOP/MCT levels. This power setting is limited to 20 seconds of application in the AFM limitations; operation for periods slightly beyond 20 seconds will result in a maintenance (NEW EXCEEDENCE) message being recorded on the Integrated Engine Display System (IEDS), which requires a maintenance check, but will not result in an engine failure. In the extremely improbable event that the APR system fails to operate in combination with an engine failure, the all-engines operating approach and go-around procedures in the Model C–295 AFM instruct the pilot to both feather the propeller on the operating engine using the Fuel Feather Levers (FFL), immediately adjacent to (on the pilot side) the aft end of the power levers, and advance the power levers to the MAX MANUAL position. This provides a subsequent level of performance greater than that presented in the AFM for the approach climb configuration of § 25.121(d). Following this action, as cockpit workload permits, MCT may be selected on the PRS followed by retarding the power levers to the MAX AUTO position, which will

provide the APR level of power for the extent of time required.

The part 25 standards for ATTCS, contained in § 25.904 and Appendix I, specifically restrict performance credit for ATTCS to takeoff. Expanding the scope of the standards to include other phases of flight, including go-around, was considered at the time the standards were issued, but flightcrew workload issues precluded further consideration. The preamble to Amendment 25–62 states:

''In regard to ATTCS credit for approach climb and go-around maneuvers, current regulations preclude a higher thrust for the approach climb (§ 25.121(d)) than for the landing climb (§ 25.119). The workload required for the flightcrew to monitor and select from multiple in-flight thrust settings in the event of an engine failure during a critical point in the approach, landing, or go-around operations is excessive. Therefore, the FAA does not agree that the scope of the amendment should be changed to include the use of ATTCS for anything except the takeoff phase.'' (52 FR 43153, November 9, 1987)

The ATTCS incorporated on the Model C–295 allows the pilot to use the same power setting procedure during an all-engines operating approach and go-around, regardless of whether or not an engine fails. In either case, the pilot obtains go-around power by moving the power levers into the MAX AUTO detent. Since the ATTCS is armed, it will function automatically following an engine failure, and increase the power on the remaining engine to the ATTCS thrust level. Therefore, this design adequately addresses the pilot workload concerns identified in the preamble to Amendment 25–62. Accordingly, these special conditions will require a showing of compliance with those provisions of § 25.904 and Appendix I that are applicable to the approach climb and go-around maneuvers.

The definition of a critical time interval for the approach climb case, during which time it must be extremely improbable to violate a flight path based on the § 25.121(d) gradient requirement, is of primary importance. The § 25.121(d) gradient requirement implies a minimum one-engine-inoperative flight path capability with the airplane in the approach configuration. There are three engine failure cases that must be considered for the approach climb: (1) The engine may have been inoperative before initiating the go-around, (2) the engine may become inoperative at the point of go-around initiation, or (3) the engine may become inoperative during the go-around. For the Model C–295, the definition of a critical time interval for the first case is not relevant since the operating procedures require selection of the MCT position on the PRS, thus enabling the pilot to manually obtain the APR level of power by advancing the power levers to the MAX AUTO position. The definition of the critical time interval must, however, be defined in accordance with the following special conditions for the second and third cases.

Applicability

As discussed above, these special conditions are applicable to the CASA Model C–295. Should CASA apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on the CASA Model C–295 airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the CASA Model C–295 airplane.

1. *General.* An Automatic takeoff thrust control system (ATTCS) is defined as the entire automatic system, including all devices, both mechanical and electrical, that sense engine failure, transmit signals, actuate fuel controls or power levers, or increase engine power by other means on operating engines to achieve scheduled thrust or power increases and furnish cockpit information on system operation.

2. *ATTCS.* The engine power control system that automatically resets the power or thrust on the operating engine (following engine failure during the approach for landing) must comply with the following requirements:

a. *Performance and System Reliability Requirements.* The concurrent existence of an ATTCS failure and an engine failure between the time at which the flightcrew last verifies that the ATTCS is in a condition to operate until the end of the critical time interval must be shown to be extremely improbable.

b. *Thrust Setting.* The ATTCS thrust or power level for go-around must be obtained in accordance with the following criteria:

(1) The maximum thrust or power attainable on each engine prior to ATTCS operation may not be less than 90 percent of the thrust or power level set by the ATTCS (the maximum takeoff thrust or power approved for the airplane under existing ambient conditions);

(2) It must be shown that the operating engine will be free of hazardous engine response characteristics when the thrust or power is increased from any level between flight idle and the maximum level attainable without ATTCS to the maximum approved takeoff thrust or power.

c. *Powerplant Controls.* In addition to the requirements of § 25.1141, no single failure or malfunction, or probable combination thereof, of the ATTCS, including associated systems, may cause the failure of any powerplant function necessary for safety. The ATTCS must be designed to:

(1) Apply thrust or power on the operating engine(s), following any one engine failure during go-around, to achieve the maximum approved takeoff thrust or power without exceeding engine operating limits; and

(2) Provide a means to verify to the flightcrew before beginning an approach for landing that the ATTCS is in a condition to operate.

3. *Critical Time Interval.* The definition of the Critical Time Interval

in Appendix I, Section I25.2(b) shall be expanded to include the following:

a. When conducting an approach for landing using ATTCS, the critical time interval is defined as follows:

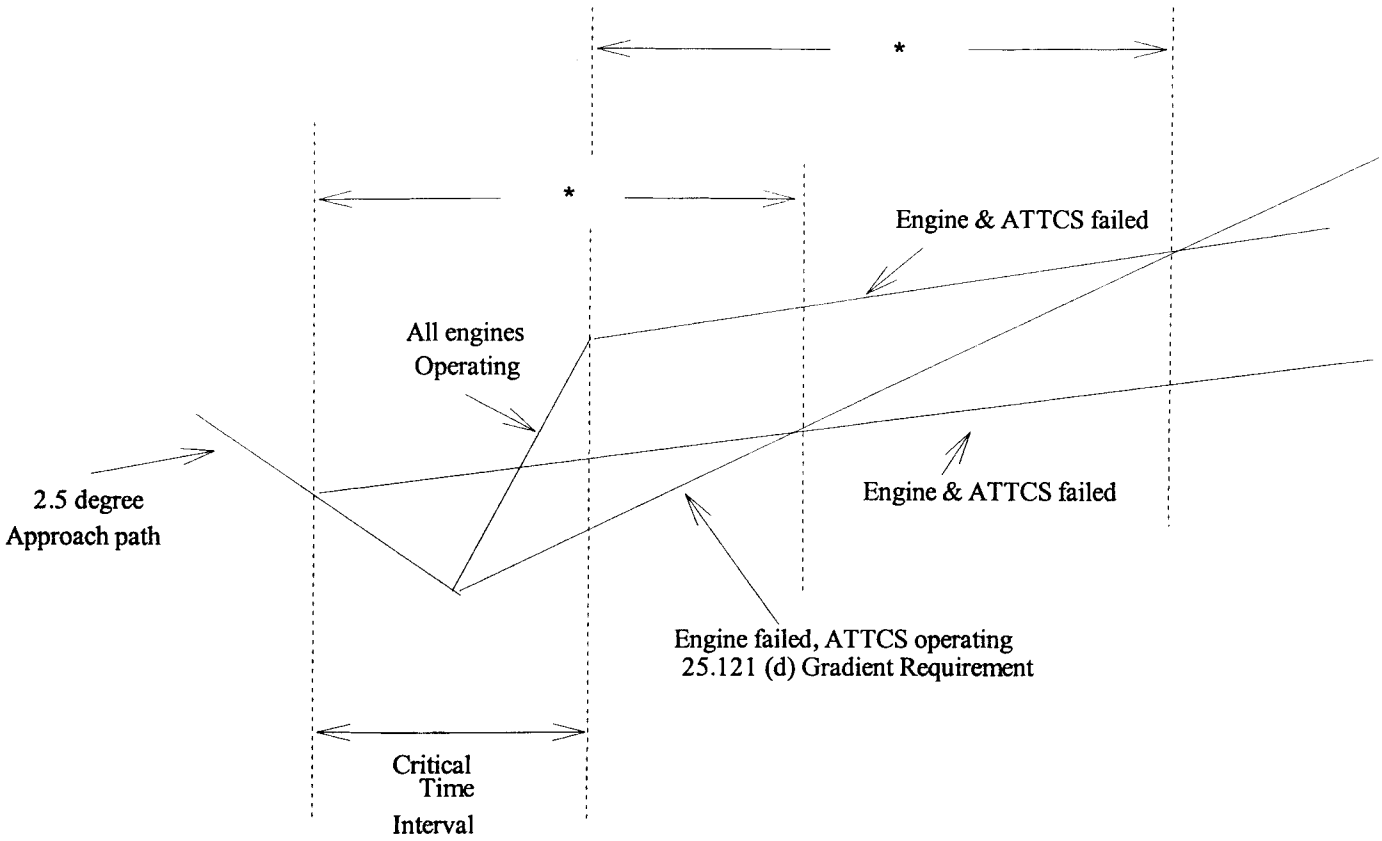
(1) The critical time interval *begins* at a point on a 2.5 degree approach glide path from which, assuming a simultaneous engine and ATTCS failure, the resulting approach climb flight path intersects a flight path originating at a later point on the same approach path corresponding to the part 25 one-engine-inoperative approach climb gradient. The period of time from the point of simultaneous engine and ATTCS failure to the intersection of these flight paths must be no shorter than the time interval used in evaluating the critical time interval for takeoff beginning from the point of simultaneous engine and ATTCS failure and ending upon reaching a height of 400 feet.

(2) The critical time interval *ends* at the point on a minimum performance, all-engines-operating go-around flight path from which, assuming a simultaneous engine and ATTCS failure, the resulting minimum approach climb flight path intersects a flight path corresponding to the part 25 minimum one-engine-inoperative approach climb gradient. The all-engines-operating go-around flight path and the part 25 one-engine-inoperative approach climb gradient flight path originate from a common point on a 2.5 degree approach path. The period of time from the point of simultaneous engine and ATTCS failure to the intersection of these flight paths must be no shorter than the time interval used in evaluating the critical time interval for the takeoff beginning from the point of simultaneous engine and ATTCS failure and ending upon reaching a height of 400 feet.

b. The critical time interval must be determined at the altitude resulting in the longest critical time interval for which one-engine-inoperative approach climb performance data are presented in the Airplane Flight Manual.

c. The critical time interval is illustrated in the following figure:

BILLING CODE 4910–13–P



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* The engine and ATTCS failed time interval must be no shorter than the time interval from the point of simultaneous engine and ATTCS failure to a height of 400 feet used to comply with I25.2(b) for ATTCS use during takeoff.

BILLING CODE 4910–13–C

Issued in Renton, Washington, on November 30, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 99–32111 Filed 12–10–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–303–AD; Amendment 39–11458; AD 99–25–15]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300, A310, A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A300, A310, A300–600 series airplanes, that currently requires a one-time operational test and repetitive functional tests of the free fall control mechanism of the landing gear to ensure proper release of the main landing gear (MLG), and corrective action, if necessary. It also requires eventual modification of the free fall control mechanism of the landing gear, which constitutes terminating action for the repetitive functional tests. This amendment requires, for certain airplanes, that the modification of the free fall control mechanism of the landing gear be accomplished in accordance with a corrected version of the manufacturer's service bulletin. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent malfunction of the free fall control mechanism of the landing gear, which could result in the inability to extend the MLG in the event of failure of the hydraulic extension system.

DATES: Effective January 18, 2000.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the **Federal Register** as of August 12, 1998 (63 FR 36832, July 8, 1998).

The incorporation by reference of certain other publications listed in the regulations is approved by the Director of the **Federal Register** as of January 18, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98–14–13, amendment 39–10646 (63 FR 36832, July 8, 1998), which is applicable to certain Airbus Model A300, A310, A300–600 series airplanes, was published in the **Federal Register** on October 5, 1999 (64 FR 53953). The action proposed to continue to require a one-time operational test and repetitive functional tests of the free fall control mechanism of the landing gear to ensure proper release of the main landing gear (MLG), and corrective action, if necessary. The action also proposed to continue to require eventual modification of the free fall control mechanism of the landing gear, which constitutes terminating action for the repetitive functional tests. Additionally, the action proposed, for certain airplanes, that the modification be accomplished in accordance with a corrected version of the manufacturer's service bulletin.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 24 Model A300 series airplanes, 41 Model A310 series airplanes, and 61 Model A300–600 series airplanes of U.S. registry will be affected by this AD.

It will take approximately 3 work hours per airplane to accomplish the currently required operational test, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required operational test on U.S. operators is estimated to be $22,680, or $180 per airplane.

It will take approximately 2 work hours per airplane to accomplish the currently required functional test, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required functional test on U.S. operators is estimated to be $15,120, or $120 per airplane, per test cycle.

It will take approximately 26 work hours per airplane to accomplish the currently required modification on Model A300 and A300–600 series airplanes, at an average labor rate of $60 per work hour. Required parts will cost approximately $2,630 per airplane.

Based on these figures, the cost impact of the currently required actions on U.S. operators of Model A300 or A300–600 series airplanes is estimated to be $356,150, or $4,190 per airplane.

It will take approximately 28 work hours per airplane to accomplish the modification on Model A310 series airplanes, at an average labor rate of $60 per work hour. Required parts will cost approximately $3,710 per airplane. Based on these figures, the cost impact of the currently required actions on U.S. operators of Model A310 series airplanes is estimated to be $220,990, or $5,390 per airplane.

The cost impact figures discussed above are 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 removing amendment 39–10646 (63 FR 36832, July 8, 1998), and by adding a new airworthiness directive (AD), amendment 39–11458, to read as follows:

99–25–15 Airbus Industrie: Amendment 39–11458. Docket 98–NM–303–AD. Supersedes AD 98–14–13, Amendment 39–10646.

Applicability: Model A300, A300–600, and A310 series airplanes, certificated in any category, as identified below:

- Model A300 and A300–600 series airplanes on which Airbus Modification 02781 has been accomplished and on which neither Airbus Modification 03433 nor 04443 has been accomplished;
- Model A310 series airplanes on which Airbus Modification 02781 has been accomplished and on which Airbus Modification 03433 has not been accomplished; and
- Model A310 series airplanes on which Airbus Service Bulletin A310–32–2111, dated March 10, 1997, or Revision 01, dated October 10, 1997; has been accomplished.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 malfunction of the free fall control mechanism of the landing gear, which could result in the inability to extend the main landing gear (MLG) in the event of failure of the hydraulic extension system, accomplish the following:

Restatement of Actions Required by AD 98–14–13, Amendment 39–10646

(a) Within 600 flight hours after August 12, 1998 (the effective date of AD 98–14–13, amendment 39–10646), perform a one-time operational test of the free fall control mechanism of the landing gear to ensure proper release of the MLG for extension by free fall, in accordance with Airbus Industrie All Operator Telex (AOT) 32–14, dated February 3, 1997, or Revision 01, dated March 13, 1997. If any discrepancy is detected in the functioning of the free fall control mechanism of the landing gear, prior to further flight, readjust the mechanism and repeat the operational test in accordance with the AOT. If any discrepancy is detected in the second operational test, prior to further flight, rerig the free fall control mechanism in accordance with the AOT, and accomplish the actions required by paragraph (b) of this AD.

(b) Within 10 months after August 12, 1998, perform a functional test of the free fall control mechanism of the landing gear to ensure proper release of the MLG for extension by free fall, in accordance with Airbus Industrie AOT 32–14, dated February 3, 1997, or Revision 01, dated March 13, 1997. Thereafter, repeat the functional test of the free fall control mechanism of the landing gear at intervals not to exceed 12 months, until the modification required by paragraph (c) or (d) of this AD has been accomplished. During any test performed in accordance with paragraph (b) of this AD, if the free fall control mechanism of the landing gear fails to fully extend the MLG, prior to further flight, readjust or rerig the mechanism in accordance with the AOT.

(c) For Model A300 and A300–600 series airplanes: Within 66 months after August 12, 1998, modify the free fall control mechanism of the landing gear in accordance with Airbus Industrie Service Bulletin A300–32–0425, Revision 02 (for Model A300 series airplanes); or A300–32–6072, Revision 02 (for Model A300–600 series airplanes); each dated June 23, 1998; as applicable. Accomplishment of the modification constitutes terminating action for the repetitive functional tests required by paragraph (b) of this AD.

Note 2: Modifications accomplished in accordance with Airbus Industrie Service Bulletin A300–32–0425, Revision 01 (for Model A300 series airplanes); or A300–32–6072, Revision 01 (for Model A300–600 series airplanes); each dated October 10, 1997; are acceptable for compliance with the requirements of paragraph (c) of this AD.

New Actions Required by This AD

(d) For Model A310 series airplanes: Within 66 months after August 12, 1998, modify the free fall control mechanism of the landing gear in accordance with Airbus Industrie Service Bulletin A310–32–2111, Revision 02, dated June 23, 1998. Accomplishment of the modification constitutes terminating action for the repetitive functional tests required by paragraph (b) of this AD.

Note 3: For Airbus Model A310 series airplanes, only a modification accomplished in accordance with Airbus Industrie Service Bulletin A310–32–2111, Revision 02, dated June 23, 1998, is acceptable for compliance with the requirements of paragraph (d) of this AD.

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(f) 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

(g) The actions shall be done in accordance with Airbus Industrie All Operator Telex 32–14, dated February 3, 1997; Airbus Industrie All Operator Telex 32–14, Revision 01, dated March 13, 1997; Airbus Industrie Service Bulletin A300–32–0425, Revision 02, dated June 23, 1998; Airbus Industrie Service Bulletin A300–32–6072, Revision 02, dated June 23, 1998; or Airbus Industrie Service Bulletin A310–32–2111, Revision 02, dated June 23, 1998; as applicable.

(1) The incorporation by reference of Airbus Industrie Service Bulletin A300–32–0425, Revision 02, dated June 23, 1998; Airbus Industrie Service Bulletin A300–32–6072, Revision 02, dated June 23, 1998; and Airbus Industrie Service Bulletin A310–32–2111, Revision 02, dated June 23, 1998, are approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation of reference of Airbus Industrie All Operator Telex 32–14, dated February 3, 1997; Airbus Industrie All Operator Telex 32–14, Revision 01, dated March 13, 1997, were approved previously by the Director of the Federal Register as of August 12, 1998 (63 FR 36832, July 8, 1998).

(3) Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in French airworthiness directive 97–113–221(B) R2, dated August 12, 1998.

(h) This amendment becomes effective on January 18, 2000.

Issued in Renton, Washington, on December 3, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–31879 Filed 12–10–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–71–AD; Amendment 39–11457; AD 99–25–14]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and MD–11F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 and MD–11F series airplanes, that requires a one-time inspection to determine if metallic transitions are installed on wire harnesses of the tail tank fuel transfer pumps, and to determine if damaged wires are present; and repair, if necessary. This amendment also would require repetitive inspections of the repaired area; and a permanent modification of the wire harnesses if metallic transitions are not installed, which terminates the repetitive inspections. This amendment is prompted by a report of chafing and damage to a wire harness of a tail tank fuel transfer pump. The actions specified by this AD are intended to prevent wire chafing and damage, which could result in an inoperative fuel transfer pump and/or an increased risk of a fire or explosion from a fuel leak.

DATES: Effective January 18, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 18, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach 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: Roscoe Van Dyke, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5254; fax (562) 627–5210.

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 McDonnell Douglas Model MD–11 and MD–11F series airplanes was published in the **Federal Register** on August 10, 1999 (64 FR 43316). That action proposed to require a one-time inspection to determine if metallic transitions are installed on wire harnesses of the tail tank fuel transfer pumps, and to determine if damaged wires are present; and repair, if necessary. That action also proposed to require repetitive inspections of the repaired area; and a permanent modification of the wire harnesses if metallic transitions are not installed, which would terminate 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 two comments received.

Support for the Proposal

One commenter supports the proposed rule.

Request Credit for Previously Accomplished Work

One commenter requests credit for prior accomplishment of the proposed one-time visual inspection, temporary repairs, and repetitive inspections of the wire harnesses of the tail tank fuel transfer pumps in accordance with McDonnell Douglas Alert Service Bulletin MD11–28A101, dated August 24, 1998.

The FAA concurs that an initial inspection, temporary repairs, and repetitive inspections accomplished prior to the effective date of this AD in accordance with McDonnell Douglas Alert Service Bulletin MD11–28A101, dated August 24, 1998, is acceptable for compliance with those requirements. However, the FAA notes that operators are always given credit for work accomplished previously if the work is performed in accordance with the existing AD by means of the phrase in the compliance section of the AD that states, ''Required as indicated, unless accomplished previously.'' Therefore 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 as proposed.

Cost Impact

There are approximately 14 airplanes of the affected design in the worldwide fleet. The FAA estimates that 5 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $300, or $60 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. However, the FAA has been advised that manufacturer warranty remedies are available for labor costs associated with accomplishing the actions required by this AD. Therefore, the future economic cost impact of this rule on U.S. operators may be less than the cost impact figure indicated above.

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:

99–25–14 **McDonnell Douglas:** Amendment 39–11457. Docket 99–NM–71–AD.

Applicability: Model MD–11 and MD–11F series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–28A101, dated August 24, 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 (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent wire chafing and damage which could result in an inoperative tail tank fuel transfer pump and/or an increased risk of a fire or explosion from a fuel leak, accomplish the following:

Inspection and Corrective Actions

(a) Within 30 days after the effective date of this AD, perform a one-time visual inspection of the wire harnesses of the tail tank fuel transfer pumps to determine if metallic transitions are installed, and to determine if damaged wires are present, in accordance with McDonnell Douglas Alert Service Bulletin MD11–28A101, dated August 24, 1998.

(1) If all metallic transitions are installed, no further action is required by this AD.

(2) If metallic transitions are not installed, accomplish the following:

(i) Prior to further flight, accomplish the temporary repair in accordance with condition 2 of the service bulletin;

(ii) Repeat the visual inspection thereafter at intervals not to exceed 2 years; and

(iii) Within 5 years after the effective date of this AD, permanently modify the wire harnesses in accordance with McDonnell Douglas Service Bulletin MD11–28–102, Revision 01, dated June 23, 1999. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of this AD.

Note 2: Modification of the wire harnesses accomplished prior to the effective date of this AD in accordance with McDonnell Douglas Service Bulletin MD11–28–102, dated January 29, 1999, is considered acceptable for compliance with the modification required by paragraph (a)(2)(iii) of this AD.

Alternative Methods of Compliance

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

Note 3: 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

(c) 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

(d) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–28A101, dated August 24, 1998, or McDonnell Douglas Service Bulletin MD11–28–102, Revision 01, dated June 23, 1999, as applicable. 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 Aircraft Group, Long Beach 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.

(e) This amendment becomes effective on January 18, 2000.

Issued in Renton, Washington, on December 2, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–31813 Filed 12–10–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–317–AD; Amendment 39–11459; AD 99–25–16]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Mark 050 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F27 Mark 050 series airplanes. This action requires the removal of tapered nylon shims from under the seat rails from fuselage station 14025 to the aft end of the seat rails, and installation of shorter bolts. This action also requires the installation of shims under galleys and partition walls for certain configurations. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to prevent failure of the seat rail attachments due to shim material aging, which could result in detachment of the seats and consequent injury to the airplane occupants.

DATES: Effective December 28, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 28, 1999.

Comments for inclusion in the Rules Docket must be received on or before January 12, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–317–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined 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.

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

SUPPLEMENTARY INFORMATION: The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on certain Fokker Model F27 Mark 050 series airplanes. The RLD advises that the nylon shims installed under the seat rails from fuselage station 14025 to the aft end of the seat rails can age. This aging may result in a reduction in strength of the seat rail attachments. Shim material deterioration could result in failure of the seat attach fittings. This condition, if not corrected, could result in detachment of the seats and consequent injury to the airplane occupants.

Explanation of Relevant Service Information

Fokker has issued Fokker 50 Service Bulletin SBF50–25–045, dated February 3, 1994, which describes procedures for the removal of tapered nylon shims installed under the seat rails from fuselage station 14025 to the aft end of the seat rails, and installation of shorter bolts. This service bulletin also describes procedures for the installation of shims under galleys and partition walls for certain configurations. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive 94–033 (A), dated February 21, 1994, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

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

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent failure of the seat attach fittings due to shim material deterioration, which could result in injury to the airplane occupants. This AD requires accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require between 16 and 50 work hours to accomplish the required actions, at an average labor rate of $60 per work hour. Required parts would cost between $294 and $1,246 per airplane. Based on these figures, the cost impact of this AD would be between $1,254 and $4,246 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not proceeded by notice and opportunity for public 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 shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended 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 Number 99–NM–317–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.

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:

99–25–16 Fokker Services B.V.: Amendment 39–11459. Docket 99–NM–317–AD.

Applicability: Model F27 Mark 050 series airplanes, serial numbers 20103 through 20258 inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the seat attach fittings due to shim material deterioration, which could result in injury to the airplane occupants, accomplish the following:

Modification

(a) Within 6 months after the effective date of this AD, accomplish the requirements of paragraphs (a)(1), (a)(2), and (a)(3), as applicable.

(1) For all airplanes: Remove the tapered shims installed under the seat rails from fuselage station 14025 to the aft end of the seat rails, and install shorter bolts, in accordance with Fokker 50 Service Bulletin SBF50–25–045, dated February 3, 1994.

(2) For airplanes having serial numbers 20182, 20192, 20202, 20210, and 20220, in which a galley 2A is installed on the seat rails between fuselage stations 15503 and 15839 (left position) and galley 2B is installed on the seat rails between stations 16039 and 16375 (right position): Install shims under the galleys in accordance with Fokker 50 Service Bulletin SBF50–25–045, dated February 3, 1994.

(3) For airplanes having serial numbers 20234 and 20235, in which the aft cabin partition walls are installed on top of the stowage boxes, which are part of the seat box assemblies: Install a shim under each partition wall in accordance with Fokker 50 Service Bulletin SBF50–25–045, dated February 3, 1994.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(d) The actions shall be done in accordance with Fokker 50 Service Bulletin SBF50–25–045, dated February 3, 1994. 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 Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Dutch airworthiness directive 94–033 (A), dated February 21, 1994.

(e) This amendment becomes effective on December 28, 1999.

Issued in Renton, Washington, on December 3, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–31878 Filed 12–10–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–383–AD; Amendment 39–11175; AD 99–11–05]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects and clarifies information in an existing airworthiness directive (AD) that applies to all Boeing Model 737 series airplanes. That AD currently requires repetitive displacement tests of the secondary slide in the dual concentric servo valve of the power control unit (PCU) for the rudder, and replacement of the valve assembly with a modified valve assembly, if necessary. This document corrects certain PCU part and serial numbers and clarifies that PCU's with certain other serial numbers are not required to comply with the requirements of this AD. This correction is necessary to prevent failure of the secondary slide and consequent rudder hardover and reduced controllability of the airplane.

DATES: Effective June 28, 1999.

The incorporation by reference of certain publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of June 28, 1999 (64 FR 27905, May 24, 1999).

FOR FURTHER INFORMATION CONTACT: R.C. Jones, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1118; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On May 13, 1999, the Federal Aviation Administration (FAA) issued AD 99–11–05, amendment 39–11175 (64 FR 27905, May 24, 1999), which applies to all Boeing Model 737 series airplanes. That AD requires repetitive displacement tests of the secondary slide in the dual concentric servo valve of the power control unit (PCU) for the rudder, and replacement of the valve assembly with a modified valve assembly, if necessary. That AD was prompted by reports of cracking found in PCU secondary servo valve slides. The actions specified by that AD are intended to prevent failure of the secondary slide and consequent rudder hardover and reduced controllability of the airplane.

Need for the Correction

Information received recently from the manufacturer indicates that the following clarifications and corrections are necessary. Paragraph (a)(2) of this AD was intended to address certain PCU's that are installed only after the effective date of the AD, and has been revised to clarify that intent. [Paragraph (a) of this AD already addresses

airplanes on which these PCU's had been installed before the effective date.] As reflected in the applicable service bulletin referenced in this AD, paragraph (a)(2) also was intended to address the PCU's having part number 65C37053–(XX), but that reference was omitted from the final rule. Similarly, as reflected in the applicable service bulletin, paragraph (a)(3) was intended to address only identified airplanes that are equipped with certain PCU's. However, as adopted, the final rule was not so limited. [Airplanes having other PCU's are subject to the longer compliance time specified in paragraph (a)(4)]. The references to these part numbers have been added to this AD.

Finally, the FAA has revised paragraph (c) of this AD to more clearly specify the actuators that may be installed after the effective date of this AD. The FAA has determined that some PCU's (referenced in Boeing Alert Service Bulletin 737–27A1221, Revision 1, and Boeing Alert Service Bulletin 737–27A1222, Revision 1, both dated January 28, 1999) have been displacement tested, but have not been vibro engraved with the letter ''C.'' (Subsequent serial numbers greater than those specified in this AD are displacement tested as part of the certified production process, and are not vibro engraved.) The FAA has determined that, for PCU's having the specified serial numbers, only those that are vibro engraved with the letter ''C'' are in compliance with the requirements of this AD. Therefore, paragraph (c) of this AD has been corrected by removing the phrase ''or letters greater than 'C'.''

Correction of Publication

This document corrects the error and correctly adds the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The AD is reprinted in its entirety for the convenience of affected operators. The effective date of the AD remains June 28, 1999.

Since this action only corrects and clarifies the current requirements, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public procedures are unnecessary.

List of Subject 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 [Corrected]

2. Section 39.13 is amended by correctly adding the following airworthiness directive (AD):

99–11–05 Boeing: Amendment 39–11175. Docket 98–NM–383–AD.

Applicability: All Model 737 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the secondary servo valve slide in the rudder power control unit (PCU) due to cracking of the slide, and consequent rudder hardover and reduced controllability of the airplane, accomplish the following:

Displacement Testing

(a) Perform a displacement test of the secondary slide in the dual servo valve in the rudder PCU, in accordance with Boeing Alert Service Bulletin 737–27A1221, Revision 1, dated January 28, 1999 (for Model 737–100, –200, –300, –400, and –500 series airplanes); or 737–27A1222, Revision 1, dated January 28, 1999 (for Model 737–600, –700, and –800 series airplanes); at the applicable time specified by paragraph (a)(1), (a)(2), (a)(3), or (a)(4) of this AD. Repeat the displacement test on that PCU thereafter at intervals not to exceed 24,000 flight hours.

Note 2: Accomplishment of the initial displacement testing required by paragraph (a) of this AD in accordance with Boeing Alert Service Bulletin 737–27A1221, dated January 14, 1999 (for Model 737–100, –200, –300, –400, and –500 series airplanes); or 737–27A1222, dated January 14, 1999 (for Model 737–600, –700, and –800, series airplanes) is acceptable only for the initial compliance requirements of this AD.

(1) For Model 737–100, –200, –300, –400, and –500 series airplanes: Conduct the displacement test within 16 months after the effective date of this AD.

(2) For airplanes on which a PCU specified in paragraph (a)(2)(I) or (a)(2)(ii) of this AD is installed within 16 months after the effective date of this AD: Conduct the displacement test within 16 months after the effective date of this AD.

(i) Part number 65–44861–12 and having serial number (S/N) 3509A or lower,

(ii) Part number 65C37053–(XX).

(3) For Model 737–600, –700, and –800 series airplanes having line numbers 1 through 222 inclusive that are equipped with PCU's having P/N 251A301–(XX) and serial number 299 or lower: Conduct the displacement test within 16 months after the effective date of this AD.

(4) For all other airplanes: Conduct the displacement test prior to the accumulation of 24,000 total flight hours on the PCU, or within 30 days after the effective date of this AD, whichever occurs later.

Corrective Actions

(b) If the results of the displacement test required by paragraph (a) of this AD are outside the limits specified by Boeing Alert Service Bulletin 737–27A1221, Revision 1, dated January 28, 1999 (for Model 737–100, –200, –300, –400, and –500 series airplanes), or 737–27A1222, Revision 1, dated January 28, 1999 (for Model 737–600, –700, and –800 series airplanes): Prior to further flight, accomplish the actions specified in paragraphs (b)(1) and (b)(2) of this AD.

(1) Replace the valve assembly, in accordance with the applicable alert service bulletin, with a serviceable valve assembly. And

(2) Following installation of the replacement valve assembly in accordance with paragraph (b)(1) of this AD, perform the displacement test required by paragraph (a) of this AD on that assembly, in accordance with the applicable alert service bulletin. If the test results are outside the limits specified by the applicable alert service bulletin, prior to further flight, replace the valve assembly with a serviceable valve assembly in accordance with the applicable alert service bulletin, and repeat the displacement test required by paragraph (a) of this AD on that assembly.

Note 3: Boeing Alert Service Bulletin 737–27A1222, Revision 1, dated January 28, 1999, refers to Parker Service Bulletin 381500–27–01, dated December 22, 1998, as an additional source of service information for accomplishment of the displacement test for Model 737–600, –700, and –800 series airplanes.

(c) As of 16 months after the effective date of this AD, no person shall install a main rudder PCU specified in paragraph (c)(1) or (c)(2) of this AD unless that PCU's nameplate has been vibro-engraved with the letter ''C'' following the serial number. (Subsequent serial numbers greater than those listed below are displacement tested as part of the certified production process, and do not require the letter ''C'' to be vibro-engraved.)

(1) For Boeing Model 737–100, –200, –300, –400, and –500 series airplanes: A PCU having P/N 65–44861–12 and a serial number (S/N) 3509A or lower; or any PCU having P/N 65C37053–(XX).

(2) For Boeing Model 737–600, –700, and –800 series airplanes: A PCU having P/N 251A301–(X) and a S/N 0299 or lower.

(d)(1) Within 30 days after accomplishing the initial displacement test required by paragraph (a) of this AD: Submit a report of the testing to the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (425) 227–1181. The report must include the displacement testing results (both positive and negative findings), test data for any failed valve assemblies, a description of any discrepancies if found, the part number and serial number of each rudder PCU tested, and the airplane serial number.

(2) Within 30 days after accomplishing any repetitive displacement testing required by paragraph (a) of this AD: Submit a report of any failed valve assembly to the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (425) 227–1181. The report must include the displacement testing results of any failed valve assembly, test data for any failed valve assemblies, a description of any discrepancies found, the part number and serial number of each rudder PCU with a failed valve assembly, and the airplane serial number.

(3) Within 30 days after accomplishing the initial displacement test required by paragraph (a) of this AD: Submit failed valve assemblies for analysis to Parker Hannifin Corporation, Chief Engineer, Customer Support Operations, 16666 Von Karman Avenue, Irvine, California 92606.

(4) 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

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. 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 4: 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

(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) The actions shall be done in accordance with Boeing Alert Service Bulletin 737–27A1221, Revision 1, dated January 28, 1999, or Boeing Alert Service Bulletin 737–27A1222, Revision 1, dated January 28, 1999. This incorporation by reference of those documents was previously approved by the Director of the **Federal Register** as of June 28, 1999 (64 FR 27905, May 24, 1999). 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.

(h) The effective date of this amendment remains June 28, 1999.

Issued in Renton, Washington, on December 7, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–32193 Filed 12–10–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–315–AD; Amendment 39–11461; AD 99–26–01]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Mark 050 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F27 Mark 050 series airplanes. This action requires a one-time inspection to verify the tension values of the aileron control cables of the left-and right-hand wings, and corrective actions, if necessary. This action also requires either replacement of the aileron control cables with new, improved aileron control cables, or replacement of the aileron control cables with new, improved aileron control cables and modification of the pulley bracket on the rear face of the bulkhead at frame station 3100. The FAA is issuing this AD in response to mandatory continuing airworthiness information issued by a foreign civil airworthiness authority. The actions specified in this AD are intended to prevent interference between the turnbuckles of the aileron control cables and the lightening holes, which could result in binding of the aileron control cables and consequent reduced controllability of the airplane.

DATES: Effective January 12, 2000.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of January 12, 2000.

The FAA must receive any comments on this rule on or before January 12, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–315–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

You may get the service information referenced in this AD from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. You may examine this information at 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, during regular business hours.

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

SUPPLEMENTARY INFORMATION: The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, notified FAA that an unsafe condition may exist on certain Fokker Model F27 Mark 050 series airplanes. The RLD received reports indicating that reduced tension of the aileron control cables could cause the cable turnbuckles to rub against the edges of the lightening holes, through which the aileron control cables run. This interference, if not corrected, could result in binding of the aileron control cables and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

The manufacturer issued Fokker Service Bulletin SBF50–27–016, Revision 3, dated April 29, 1996. This bulletin describes procedures you must use for adjusting the tension of the aileron control cables, and includes information for replacing the aileron control cables with new, improved aileron control cables and modification of the pulley bracket on the rear face of the bulkhead at frame station 3100.

The manufacturer also issued Fokker Service Bulletin SBF50–27–040, dated May 10, 1996. This bulletin describes an alternative procedure for replacing the aileron control cables with new, improved aileron control cables.

When you accomplish the actions specified in these service bulletins, you will adequately address the identified unsafe condition. The RLD classified

these service bulletins as mandatory and issued Dutch airworthiness directive 1995–075/3 (A), dated May 31, 1996, in order to ensure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. The FAA examined the findings of the RLD, reviewed the available information, and determined that we should issue an AD covering products of this type design certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, FAA is issuing this AD to require you to take action to prevent interference between the turnbuckles of the aileron control cables and the lightening holes, which could result in binding of the aileron control cables and consequent reduced controllability of the airplane. This AD requires you to accomplish the actions specified in the service bulletins described previously, except as discussed below.

Differences Between Final Rule and Service Information

Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF50–27–016, Revision 3, recommends adjustment of the aileron control cables. This AD requires an inspection to verify the tension values of the aileron control cables of the left- and right-hand wings prior to adjustment of the aileron control cables. If the tension values of the aileron control cables are within the limits specified by Part 1 of the Accomplishment Instructions, you do not need to adjust the aileron control cables.

Cost Impact

None of the airplanes affected by this action is on the U.S. Register. All airplanes covered by this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, FAA considers that this rule is necessary to ensure that the unsafe condition is addressed if any of these airplanes are placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 10 work hours to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD would be $600 per airplane.

If an affected airplane is placed on the U.S. register, and the operator chooses to comply with this AD using the requirements listed in paragraph (d)(2)(i), which includes replacing the aileron control cables, it would take about 24 work hours. The average labor rate is $60 per work hour, and the required parts would cost about $1,517. The total cost for parts and labor is estimated to be $2,957 per airplane.

If an affected airplane is placed on the U.S. register, and the operator chooses to comply with this AD using the requirements listed in paragraph (d)(2)(ii), which includes replacing the aileron control cables and modifying the pulley bracket, it would take about 170 work hours. The average labor rate is $60 per work hour, and the required parts would cost about $2,300. The total cost for parts and labor is estimated to be $12,500 per airplane.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, FAA invites comments on this rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption ''**ADDRESSES**.'' The FAA will consider all comments received on or before the closing date. We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether we need to take additional rulemaking action.

The FAA is re-examining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on whether the style of this document is clearer, and in any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at http://www.plainlanguage.gov.

The FAA specifically invites comments on the overall regulatory, economic, environmental and energy aspects of this rule that might suggest a need to modify this rule. You may examine all comments we receive before and after the closing date in the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this AD.

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket Number 99–NM–315–AD.'' We will date stamp and mail the postcard back to you.

Regulatory Impact

These regulations will not have a substantial direct effect 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, the FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

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. The FAA has prepared a final evaluation and placed it in the Rules Docket. You can get a copy of this evaluation at the location listed 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, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 (part 39 of the Federal Aviation Regulations) 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. FAA amends § 39.13 by adding the following new airworthiness directive:

99–26–01 Fokker Services B.V.: Amendment 39–11461. Docket 99–NM–315–AD.

(a) What airplanes does this directive apply to? This directive applies to:

Manufacturer	Model	Series	Line/Serial #	Cert. Category
Fokker	F27	Mark 050	20103–20172	All.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register. However, the AD does not apply to your airplane if you already accomplished the requirements of either:

(1) Fokker Service Bulletin SBF50–27–040, dated May 10, 1996, or

(2) Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF50–27–016, Revision 3, dated April 29, 1996.

(c) *What problem does this AD address?* There is evidence that the turnbuckles of the aileron control cables can interfere with the lightening holes. This can cause the control cables to bind, which can reduce the pilot's ability to control the airplane.

(d) *What must I do to address this problem?* To address this problem, you must:

(1) Perform a one-time inspection to verify the tension values of the aileron control cables. Perform this inspection within 30 days after the effective date of this AD. The tension values are specified in Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF50–27–016, Revision 3, dated April 29, 1996.

(i) If the tension values of the aileron control cables are within the values specified in the service bulletin, you need to take no further action to comply with paragraph (d)(1) of this AD.

(ii) If the tension values of the aileron control cables are not within the values specified in the service bulletin, then prior to further flight, adjust the aileron control cables to the specified tension values in accordance with the service bulletin.

(2) Within 5 months after the effective date of this AD, or at the next scheduled 4,000 flight hour inspection, whichever occurs first, accomplish paragraph (d)(2)(i) or (d)(2)(ii) of the AD. Since the new, improved aileron control cables are not interchangeable with the existing aileron control cables, you must replace all aileron control cables at the same time.

(i) Replace all aileron control cables with new, improved aileron control cables, in accordance with Fokker Service Bulletin SBF50–27–040, dated May 10, 1996; or

(ii) Replace all aileron control cables with new, improved aileron control cables; and modify the pulley bracket on the rear face of the bulkhead at frame station 3100; in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF50–27–016, Revision 3, dated April 29, 1996.

(e) *Can I comply with this AD in any other way?* Yes.

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative provides an acceptable level of safety; and

(ii) The Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, approves your alternative. Submit your request for approval through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager.

(2) This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact the International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue you a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Yes. Actions required by this AD must be done in accordance with Fokker Service Bulletin SBF50–27–040, dated May 10, 1996, or Fokker Service Bulletin SBF50–27–016, Revision 3, dated April 29, 1996, as applicable. Fokker Service Bulletin SBF50–27–016, Revision 3, includes the following effective pages:

Page No.	Revision Level Shown on Page	Date Shown on Page
1–5, 10, 12	3	Apr. 29, 1996.
6, 9	2	July 7, 1992.
7, 8, 11, 15, 16	1	May 24, 1991.
13, 14	Original	Dec. 29, 1989.

The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies of these service bulletins from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. You can look at copies at FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note: The subject of this AD is addressed in issued Dutch airworthiness directive 1995–075/3 (A), dated May 31, 1996.

(i) When does this amendment become effective? This amendment becomes effective on January 12, 2000.

Issued in Renton, Washington, on December 6, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–32023 Filed 12–10–99; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 4

Privacy Act of 1974; Implementation

AGENCY: Federal Trade Commission (FTC).

ACTION: Final rule amendment.

SUMMARY: The FTC amends its Privacy Act rules to include a new exempt system of records that will be used to compile and maintain identity theft complaint data. This system implements the requirements of the Identity Theft and Assumption Deterrence Act of 1998. The exemption will help prevent individuals suspected of engaging in identity theft from obtaining access to complaint data.

DATES: This amendment is final and effective on December 13, 1999.

FOR FURTHER INFORMATION CONTACT: Alex Tang, Attorney, Office of the General Counsel, FTC, 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326–2447. For more information about the Commission's identity theft program, contact Beth Grossman, (202) 326–3019, or Joanna Crane, (202) 326–3258, Attorneys, Division of Planning & Information, Bureau of Consumer Protection, FTC, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On October 27, 1999, in accordance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Commission published notice of its intent to establish a new agency system of records, entitled FTC–IV–2, ''Identity Theft Complaint Management System'FTC,'' and sought public comment on a proposed amendment of the Commission's rules to exempt the system from certain provisions of the Act. *See* 64 FR 57887 (system notice), 57825 (notice of proposed rulemaking to amend Commission Rule 4.13(m), 16 CFR 4.13(m)). The system of records will enable the FTC to fulfill its statutory responsibilities under section 5 of the Identity Theft and Assumption Deterrence Act of 1998, Public Law 105–318, 112 Stat. 3007, 3010, 18 U.S.C. 1028 note (''ITADA''). The ITADA designates the FTC to serve as a clearinghouse for the receipt and referral of identity theft complaints and requires that the FTC establish procedures: (1) To log and acknowledge receipt of complaints from individuals who certify that they have a reasonable belief that one or more of their means of identification have been assumed, stolen, or otherwise unlawfully acquired in violation of the statute; (2) to provide informational materials to such individuals; and (3) to refer such complaints to ''appropriate entities.'' Under the statute, these entities include, but are not limited to, the three major national consumer reporting agencies (i.e., currently Equifax, Experian and Trans Union) and appropriate law enforcement agencies for potential law enforcement action.

As explained in the Commission's notice of the proposed rulemaking, the Commission believes that the identity theft complaint data contained in the system must be exempted under the Privacy Act to prevent certain categories of individuals (e.g., targets of identity theft complaints or investigations), to the extent they are covered by the system, from invoking the Act to obtain access to complaint files that may pertain to their activities. A principal purpose for compiling these complaint files is for law enforcement, since these complaints focus on specific instances of suspected illegal identity theft. In many cases, these complaints will be referred to other law enforcement authorities, as contemplated by the ITADA, and in certain cases, may also be relevant to Commission investigations. Under these circumstances, disclosure of the complaint file to a target would harm or otherwise interfere with law enforcement efforts. For example, if the complaint data were not exempted from access, a target could anticipate and evade prosecution by learning about actual or potential law enforcement referrals, investigations, or other actions from information maintained in the complaint file. Such access to the file could also inadvertently facilitate further identity theft or retaliation by enabling the target to ascertain or confirm sensitive personal information submitted by and being maintained about the identity theft victim or about other informants.

The Commission received no comments in response to its proposed exemption of the system. Accordingly, for the reasons set forth above, the Commission is amending Commission Rule 4.13(m), 16 CFR 4.13(m), to add the system to its inventory of systems that are exempt under subsection (k)(2) of the Privacy Act, 5 U.S.C. 552a(k)(2). The Commission, however, reserves the sole discretion to permit certain categories of individuals (e.g., complainants or other individual informants) whose records are covered by the system to obtain access to information that was provided by such individuals in order to correct, update or verify the accuracy of that information or for other related purposes.

The Commission certifies that this rule amendment does not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

List of Subjects in 16 CFR Part 4

Administrative practice and procedure, Freedom of Information, Privacy, Records, Sunshine Act.

For the reasons stated in the preamble, the Federal Trade Commission amends 16 CFR chapter I as follows:

PART 4—MISCELLANEOUS RULES

1. The authority for part 4 continues to read:

Authority: 15 U.S.C. 46, unless otherwise noted.

2. Amend § 4.13 by revising paragraph (m)(2) to read as follows:

§ 4.13 Privacy Act rules.

* * * * *

(m) * * *

(2) Pursuant to 5 U.S.C. 552a(k)(2), investigatory materials compiled for law enforcement purposes in the following systems of records are exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of 5 U.S.C. 552a, and from the provisions of this section, except as otherwise provided in 5 U.S.C. 552a(k)(2):

Investigational, Legal, and Public Records—FTC
Disciplinary Action Investigatory Files—FTC
Clearance to Participate Applications and the Commission's Responses Thereto, and Related Documents—FTC
Management Information System—FTC
Office of the Secretary Control and Reporting System—FTC
Office of Inspector General Investigative Files—FTC
Stenographic Reporting Service Requests—FTC
Identity Theft Complaint Management System—FTC
Freedom of Information Act Requests and Appeals—FTC
Privacy Act Requests and Appeals—FTC
Information Retrieval and Indexing System—FTC

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–32036 Filed 12–10–99; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 601

[TD 8848]

RIN 1545–AX29

Use of Penalty Mail in the Location and Recovery of Missing Children

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Procedural rules.

SUMMARY: This rule establishes the procedures under which the IRS may use penalty mail to aid in the location and recovery of missing children. The IRS can participate in this cause as a result of the Juvenile Justice and Delinquency Prevention Act of 1974. Printing pictures and biographical data of missing children on blank pages of annual tax forms and instructions, taxpayer information publications, and other IRS products will assist the National Center for Missing and Exploited Children (National Center).

DATES: *Effective Date:* December 13, 1999.

Applicability Date: For dates of applicability of these regulations, see § 601.901(e).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Randall Hall, (202) 283–7900 (not a toll-free number); concerning the IRS' forms and publications program, Sandy Kopta, (202) 622–3726 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On August 9, 1985, Congress enacted Public Law 99–87, 99 Stat. 290, which added a new section 3220 to title 39, United States Code. That provision authorized Federal agencies to place photographs and biographical data of missing children on penalty mail in accordance with guidelines promulgated by the Department of Justice. On December 1, 1997, Congress amended the statute to provide that the use of missing children photographs and biographical data on penalty mail would be continued until December 31, 2002.

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) within the Department of Justice is directed by 39 U.S.C. 3220 (a) (1), after consultation with appropriate public and private agencies, to prescribe general guidelines under which penalty mail may be used to assist in the location and recovery of missing children. These guidelines were published on November 8, 1985 (50 FR 46622). In addition, each executive department of the Government of the United States is required by 39 U.S.C. 3220 (a) (2) to promulgate or authorize subunits to promulgate regulations under which penalty mail sent by such departments may be used in conformance with the OJJDP guidelines.

This rule is being promulgated in compliance with 39 U.S.C. 3220 (a)(2) and is in conformance with the OJJDP guidelines. The rule sets forth information on U.S. Postal Service restrictions on the placement of information, ''shelf-life'' restrictions on the use of missing children information, and other applicable administrative factors.

The IRS will receive photographic and biographical information on missing children through the National Center. The IRS will then give priority to the use of missing children information in mail addressed to members of the public.

Findings and Other Matters

The Commissioner has determined that notice and prior public procedure are not required for this regulation because the subject matter of the regulation pertains only to the IRS's use of penalty mail in the location and recovery of missing children. The regulation does not directly affect the rights and interests of the general public. For these reasons, the rule is to be effective on the date of publication in the **Federal Register**.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 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) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. Chapter 6) does not apply. Pursuant to section 7805 (f) of the Internal Revenue Code, this statement of procedural rule will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting information. The principal author of this statement of procedural rule is Randall Hall, Office of Chief Counsel (General Legal Services). However, other personnel from the IRS participated in its development.

List of Subjects in 26 CFR Part 601

Administrative practice and procedure, Freedom of information, Infants and children, Postal Service, Reporting and recordkeeping requirements, Taxes.

Adoption of Amendments to the Statement of Procedural Rules

Accordingly, 26 CFR part 601 is amended as follows:

PART 601—STATEMENT OF PROCEDURAL RULES

Paragraph 1. The authority citation for part 601 is revised to read as follows:

Authority: 5 U.S.C. 301 and 552, unless otherwise noted.

Subpart I also issued under 39 U.S.C. 3220.

Par. 2. Subpart I, consisting of § 601.901, is added to read as follows:

Subpart I—Use of Penalty Mail in the Location and Recovery of Missing Children

§ 601.901 Missing children shown on penalty mail.

(a) *Purpose.* To support the national effort to locate and recover missing children, the Internal Revenue Service (IRS) joins other executive departments and agencies of the Government of the United States in using official mail to disseminate photographs and biographical information on hundreds of missing children.

(b) *Procedures for obtaining and disseminating data.* (1) The IRS shall publish pictures and biographical data related to missing children in domestic penalty mail containing annual tax forms and instructions, taxpayer information publications, and other IRS products directed to members of the public in the United States and its territories and possessions.

(2) Missing children information shall not be placed on the ''Penalty Indicia,'' ''OCR Read Area,'' ''Bar Code Read Area,'' and ''Return Address'' areas of letter-size envelopes.

(3) The IRS shall accept photographic and biographical materials solely from the National Center for Missing and Exploited Children (National Center). Photographs that were reasonably current as of the time of the child's disappearance, or those which have been updated to reflect a missing child's current age through computer enhancement technique, shall be the only acceptable form of visual media or pictorial likeness used in penalty mail.

(c) *Withdrawal of data.* The shelf life of printed penalty mail is limited to 3 months for missing child cases. The IRS shall follow those guidelines whenever

practicable. For products with an extended shelf life, such as those related to filing and paying taxes, the IRS will not print any pictures or biographical data relating to missing children without obtaining from the National Center a waiver of the 3-month shelf-life guideline.

(d) *Reports and contact official.* IRS shall compile and submit to OJJDP reports on its experience in implementing Public Law 99–87, 99 Stat. 290, as required by that office. The IRS contact person is: Chief, Business Publications Section (or successor office), Tax Forms and Publications Division, Technical Publications Branch, OP:FS:FP:P:3, Room 5613, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224.

(e) *Period of applicability.* This section is applicablle December 13, 1999 through December 31, 2002.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–32098 Filed 12–10–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[VA–113–FOR]

Virginia Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving an amendment to the Virginia permanent regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment provides clarification of an existing State policy directive concerning permit revisions. The amendment is intended to improve the operational efficiency of the State program.

EFFECTIVE DATE: December 13, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219, Telephone: (540) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program.
II. Submission of the Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Virginia Program

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. You can find background information on the Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the December 15, 1981, **Federal Register** (46 FR 61085–61115). You can find later actions on conditions of approval and program amendments at 30 CFR 946.11, 946.12, 946.13, 946.15, and 946.16.

II. Submission of the Amendment

By letter dated November 17, 1998 (Administrative Record No. VA–959), the Virginia Department of Mines, Minerals and Energy (DMME) submitted a clarification dated September 18, 1998, to its existing policy guidelines concerning the applicable information and procedural standards for permit revisions. The Virginia regulations at 4VAC 25–130–774.13(b)(2) require the Virginia Division of Mined Land Reclamation to establish such guidelines.

We announced receipt of the proposed amendment in the December 23, 1998, **Federal Register** (63 FR 71047), invited public comment, and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on January 22, 1999. No one requested to speak at a public hearing, so no hearing was held.

III. Director's Findings

Following, according to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the proposed amendment.

The clarification to the Virginia program is as follows:

The following information provides guidance to improve consistency and to enable you to properly plan for any addition of acreage to your permit. The Virginia law and regulation dealing with such additions conform to the federal definitions.

The Virginia Regulation at 4 VAC 25–130–774.13(d) requires:

> Request to change permit boundary. Any extension to the area covered by the permit, except incidental boundary revisions, shall be made by application for a new permit.

Consistent with this regulation, any request for a non-incidental extension to the area covered by an existing permit shall be made by application for a new permit using the Division's permit application forms DMLR–PT–034e, DMLR–PT–034p, DMLR–PT–034o. It should be noted that these new forms are the same forms that the Division will use to implement Electronic Permitting in a few months. Implementing usage of these forms at this time will be a precursor to Electronic Permitting and will allow permittees to become familiar with the format of what will be required for Electronic Permitting. Permittees may use one of two options in submitting the application for a new permit:

1. The application may be for a completely new permit for the proposed area, with a new permit number issued and new issuance, expiration and anniversary dates assigned; or

2. The application may combine the existing permit area with the proposed additional area. The permit number would remain the same, as well as the permit issuance, expiration and anniversary date. This application may reference any applicable parts of the previously approved permit plans (with copies of the relevant sections included), but it shall provide all the information necessary for a new permit on the proposed additional area. This new information shall also include any portions of the plans for the previously approved permit area, if they are affected by the addition of the new area and shall be revised. The application will be processed as a new permit application.

With these two options, the applicant retains the discretion to apply for a separate and distinct permit for the new area, resulting in two separate permits with different permit numbers or to retain the existing permit number. However, when DMLR finds the new area is not a functional extension of the existing permit, but rather a separate operation, the Division may require an application for a separate permit.

Incidental boundary revisions (IBR) include only minor changes to permit boundaries that are incidental to the approved operations; such as road alignment, drainage alignment, parking areas, additional entries/punch-outs for underground operations, or other non-coal removal functions necessary for the orderly and continuous conduct of the approved operation.

A proposal to increase the area available for coal removal will not be treated as an IBR unless the coal removal is incidental to the primary purpose of the revision. For example, if the realignment of a road also involved mining a small amount of coal in the

road cut, and/or the increase in area is minor then it may be deemed an IBR. The Division may also approve small adjustments to the permit boundary as an IBR when there is no net increase in the permitted area.

The Federal regulations concerning requests to change permit boundaries occur at 30 CFR 774.13—Permit revisions. 30 CFR 774.13(d) provides the following: ''Request to change permit boundary. Any extensions to the area covered by the permit, except incidental boundary revisions, shall be made by application for a new permit. The Virginia regulations at 4 VAC 25–130–774.13(d) mirror the Federal requirement.

The Virginia amendment does not alter the requirement to make application for a new permit for all boundary revisions, except incidental boundary revisions. The amendment identifies the permit application forms to be used, and indicates that the forms will also be used with future applications under Electronic Permitting. The amendment further identifies two options permittees may use in submitting the application for a new permit. There are no direct counterparts to these policy guidelines in the Federal regulations at 30 CFR 774.13(d) concerning requests to change permit boundaries. We find, however, that the policy guidance does not change the requirements for a new permit (information, public notice and hearing opportunities) that revisions, except for incidental boundary revisions, must meet. Therefore, the guidance is consistent with the Federal regulations at 30 CFR 774.13(d), and can be approved.

The State policy guidance also addresses incidental boundary revisions (IBR). The Federal regulations provide no specific guidance on IBR's, nor do they define the term ''incidental.'' Thus, the scale and extent of incidental boundary revisions is left to the State regulatory authority to incorporate into the State program. Classification as an incidental boundary revision still requires review and evaluation by the State. In 1986 (51 FR 42548), we approved Virginia's guidelines for identifying significant and minor permit revisions. The current amendment adds to, but does not replace, those guidelines. In cases where coal removal is involved, we believe that to be consistent with 30 CFR 774.13(d), coal removal cannot be the primary purpose of an IBR. The Virginia policy requires that coal removal must be incidental to the primary purpose of the IBR.

We find that the State's policy concerning IBR's does not render the Virginia program less effective than 30 CFR 774.13(d), that Virginia has reasonably exercised its discretion, and that the policy is not inconsistent with SMCRA and the Federal regulations. Therefore, the policy can be approved.

IV. Summary and Disposition of Comments

Federal Agency Comments

According to 30 CFR 732.17(h)(11)(i), we solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Virginia program. The U.S. Department of Labor, Mine Safety and Health Administration (MSHA) responded and said that there appears to be no conflict with MSHA regulations and/or procedures and that the amendment is deemed appropriate.

The U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS) responded and concluded that its position is that the amendment should be approved. The NRCS also stated that the definition of ''incidental boundary revision'' is somewhat arbitrary, and that a more definable limit between a boundary revision that is incidental and the need to seek a new or revised permit may be needed. The Federal regulations at 30 CFR 774.13(d) provide that any extensions to the area covered by the permit, except incidental boundary revisions, shall be made by application for a new permit.

The Federal regulations do not define the term ''incidental boundary revision.'' Therefore, it is each State's obligation to determine when a boundary revision is significant and when it is incidental.

4 VAC 25–130–774.13(b)(2) require the DMME to establish guidelines for identifying the scale or extent of permit revisions that would require an application for a new permit. By letter dated August 14, 1986, Virginia submitted a listing of the circumstances under which a revision would be considered significant (and which are subjected to the entire permit information, notice, and participation requirements) and those under which it would be considered minor. We reviewed and then approved Virginia's listing on November 25, 1986 (51 FR 42548). The current submittal is intended to further clarify the 1986 listing.

The U.S. Fish and Wildlife Service (USFWS) responded to the current submittal and stated that to minimize impacts to listed species or habitat, whenever a revision is determined to be an IBR, an assessment should be completed to identify any threats to protected species. These findings should then be presented to the USFWS for final determination to insure such action will not adversely affect Federally listed species or designated critical habitat.

We asked the DMME to respond to the USFWS comments. DMME stated that Virginia makes the requested assessment and findings. These assessments and findings are made prior to the issuance of the initial permit (4 VAC 25–130–773.15(c)(10) and 25–130–780.16). These findings are then reviewed halfway through the permit term (4 VAC 25–130–774.11), during the quarterly on-site inspections (4 VAC 25–130–840.11) and if there is any permit renewal (4 VAC 25–130–773.15(c)(10). Additionally, certain permit revisions including permit boundary revisions may require notice and participation by governmental entities. DMME stated that permit revisions are divided into four classifications: (1) Significant revisions which are subjected to the entire permit information, notice, and participation requirements; (2) minor revisions which by definition do not affect the conditions or have impacts that were not considered or addressed in the initial assessment and findings [minor revisions must still contain sufficient information to establish their inconsequential nature]; (3) incidental boundary revisions and (4) significant boundary revisions. Only those boundary revisions that qualify as an IBR pursuant to the 1998 guidelines and qualify as a minor revision pursuant to the 1986 guidelines will be exempted from the notice and participation standards. Thus we agree that Virginia's existing requirements satisfy USFWS' request.

Nonetheless, we asked the USFWS to comment on the DMME response. The USFWS stated that the terms, conditions and findings for individual Virginia program permits may fall short of providing adequate protection to all Federally listed species. As an example, the USFWS stated that it has noticed during permit reviews that the ecological information provided in permit applications is altogether inadequate to substantiate risk to threatened and endangered resources. This uncertainty, the USFWS stated, hinders reviewers, such as the USFWS or the DMLR, in their obligation to develop appropriate terms and conditions to prevent resource injury. The USFWS recommended the following changes to alleviate the uncertainty it sees in the permitting process.

First, the USFWS recommended that standardized biological reporting and

monitoring guidelines should be developed, approved and implemented for all permit applications. The USFWS stated that it has encouraged the State to develop fish and wildlife reporting and monitoring guidelines and has offered to assist in this endeavor. It appears from its comments above, that the USFWS is more concerned with the general level of actual reporting and monitoring of biological information that is provided in all Virginia permit applications, than it is with the written guidelines established for IBR's. This amendment only concerns guidelines for IBR's, thus, USFWS' recommendation is beyond the scope of this amendment. Also, our oversight of the Virginia program has not identified such a problem. However, we will look into USFWS' allegations. We encourage the USFWS and the DMME to work together to address the USFWS concerns.

Second, the USFWS recommended that a numeric (acreage) condition be set that would define the extent and scale of IBR's. This would prevent areas of several hundred acres from being included as an IBR or considered a minor revision of an inconsequential nature and excluded from any agency review process. As we discussed above in the finding, we believe that the State has adequately shown that the proposed amendment is consistent with and no less effective than the Federal regulations. The Federal regulations do not define the term ''incidental'' nor does OSM's only directive on IBR's. See, ''Incidental Boundary Revisions'' (REG–19). Therefore, the Virginia program is not less effective than the Federal regulations because it does not contain an acreage standard. However, we do not discourage the development of such a standard.

It is our opinion that the proposed amendment does not lessen the effectiveness of the Virginia program. It is also our opinion that our approval of this amendment is not likely to jeopardize the continued existence of any Federally listed, threatened or endangered species or result in the destruction or adverse modification of designated critical habitat. Consequently, we are approving the proposed amendment.

Public Comments

We solicited public comments on the amendment. The Virginia Department of Historic Resources responded and stated that the amendment will not affect historic properties and it has no objection to the amendment.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to any provisions of the State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions Virginia proposed pertain to air or water quality standards. However, OSM requested EPA's comments on the proposed amendment. EPA did not provide any comments.

V. Director's Decision

Based on the above findings, we approve the amendment submitted by Virginia on November 17, 1998, that clarifies the informational and procedural requirements for permit revisions that propose to change an existing permit boundary.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 946 which codifies decisions concerning the Virginia program. We are making this final rule effective immediately to expedite the State program amendment process, and to encourage Virginia to bring its program into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

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

Executive Order 12988

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

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Unfunded Mandates

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

List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 29, 1999.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 946—VIRGINIA

1. The authority citation for Part 946 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 946.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 946.15 Approval of Virginia regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* *	* *	* * *
November 17, 1998	December 13, 1999	Policy clarification for implementing 4 VAC 25–130–774.13(d).

[FR Doc. 99–32210 Filed 12–10–99; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 207

St. Marys Falls Canal and Locks, Michigan; Use, Administration and Navigation

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers is amending its regulations on procedures to navigate the St. Marys Falls Canal and Soo Locks at Sault St. Marie, Michigan to incorporate changes in navigation procedures published in Notice to Navigation Interests over the last three years. The St. Marys Falls Canal and Locks navigation regulation is amended to change the location where up bound vessels seeking passage through the Soo Locks request lock dispatch. This regulation also establishes the minimum number of line handlers that vessels should have while locking through the Soo Locks, place a restriction on the use of bow/stern thrusters while transiting through the Soo Locks, add a procedure for vessels departing from the MacArthur and Poe Locks simultaneously or at approximately the same time, and add a tug assist procedure for self-powered vessels.

DATES: The final rule is effective January 12, 2000.

ADDRESSES: U.S. Army Corps of Engineers, ATTN: CECW–OD, 20 Massachusetts Avenue, NW, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Hilton, Dredging and Navigation Branch (CECW-OD) at (202) 761–8830 or Mr. Michael O'Bryan, Assistant Chief, Construction-Operations Division, Detroit District at (313) 226–6444.

SUPPLEMENTARY INFORMATION: The notice of proposed rulemaking was published on Tuesday, August 31, 1999, vol. 64, No. 168, pages 47462—47464.

Pursuant to its authority in Section 4 of the Rivers and Harbors Act of August 18, 1894 (28 Stat. 362; 33 U.S.C. 1), the Corps is amending the regulations in 33 CFR 207.440(c), (e), (f), (h), and (r). The regulation governing the operation of the St. Marys Falls Canal and Locks, 33 CFR 207.440 was adopted on November 27, 1945 (10 FR 14451) and has been amended at various times.

Paragraph (c) is amended to formally establish the call-in location and change in call sign currently being utilized by vessel owners. The call sign was changed due to the realignment of the Corps of Engineers Division Offices and was published in a Notice to Navigation Interests on November 25, 1997. Amending paragraph (c) responds to a request from users of the Soo Locks to further formalize the up bound call-in point by changing the regulation for operating the locks.

Paragraph (e) is amended to establish a requirement for vessels passing through the locks to provide line handlers. Over the past decade, the number of line handlers provided by the Government has decreased. On April 19, 1996, the Corps Detroit District published a Notice to Navigation Interests indicating that the Government would no longer provide pier line handlers. This amendment adds a requirement that vessels provide line handlers for passage through the locks and delineates the number of line handlers required based on weather and vessel conditions.

Paragraph (f) is amended to restrict the use of bow and stern thrusters while the vessel is in the locks to reduce the negative effects caused by the currents and water movement created by use of thrusters that may damage the locks walls and gates.

Paragraph (h) is amended to establish a procedure for the order of departure for vessels attempting to leave the MacArthur and Poe Locks simultaneously. This procedure is a safety measure to prevent two vessels from being in the lock canal at the same time.

Paragraph (r) is amended to establish a tug-assist requirement for vessels without bow and stern thrusters and for other types of powered vessels that may have difficulty maneuvering in close quarters while navigating at low speed. High winds, changing currents and inclement weather may affect a vessel's ability to maneuver within close quarters while at low speeds.

This final rule is not a major rule for the purposes of Executive Order 12866. As required by the Regulatory Flexibility Act, the Corps of Engineers certifies that this final rule will not have a significant impact on small business entities.

Comments on the Proposed Rule

One comment was received to the August 31, 1999, **Federal Register** notice and the August 31, 1999, Public Notice issued by the Corps of Engineers Detroit District. The commenter's association represents eleven U.S.-flag Great Lakes fleets that have a combined total of 61 vessels. The association supports the changes, but recommended two changes in the navigation procedures. First, they recommend that § 207.440(e)(1) reflect the changes in manning levels, duty assignments and designation of personnel and automated systems currently in use. The manning levels currently in use by most domestic and foreign vessels 400 gross tons or over navigating the canal under their own power have the following ship's personnel: In the pilot house, on the bridge, the master. One mate and one able body seaman shall be on watch and available to assist; in the engine room, the engineering watch officer. The chief engineer shall be available to assist. The second recommendation is to amend § 207.440(h)(2)(i) to add a new § 207.440(h)(2)(i)(C) and delete § 207.440(h)(ii)(B). The recommended new paragraph would read ''If two masters agree to a different departure scheme they both shall notify the lockmaster and request a change to the

above.'' This would allow the master of each vessel that arrived simultaneously or at approximately the same time, at the McArthur Lock and the Poe Lock to negotiate their departure sequence during the locking operation. We agree there are situations when one vessel may need to leave the lock out of sequence with the established departure scheme. The recommended paragraph allows the two vessels captains to reach agreement while the locking operation is under way. As proposed, each vessel master would notify the lockmaster and request a change to the established departure scheme. We concur with the proposed language, except both vessel masters must contact the Chief Lockmaster rather than the lockmaster, since only the Chief Lockmaster has the authority to allow vessels to deviate from the established departure scheme. Having each vessel master contact the Chief Lockmaster, avoids any possible misunderstanding between each vessel master. We, therefore, do not concur with deleting § 207.440(h)(2)(ii)(B), which provide for the Chief Lockmaster to deviate from the departure scheme on a case by case basis, since the Chief Lockmaster has the overall responsibility for navigation vessel safety while vessels transit the St. Marys Falls Canal and Soo Locks. Section 207.440(h)(2)(ii)(B) is, however, renumbered to § 207.440(h)(2)(iv) and the suggested language becomes part of this new paragraph. The paragraph is renumbered, since a deviation of the lockage scheme applies to all departure procedures, not just when a 1,000-foot vessel is ready to depart. Section 207.440(h)(2)(ii)(A) is renumbered to § 207.440(h)(2)(iii), to clarify that all vessels are to remain in radio contact with each other and with the lockmaster at all times until clear of the lock area, not just when a 1,000-foot vessel is ready to depart.

List of Subjects in 33 CFR Part 207

Navigation (Water), Vessels, Water Transportation

For reasons set out in the preamble, Title 33, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 207—NAVIGATION REGULATIONS

1. The authority citation for part 207 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1).

2. Section 207.440 is amended by revising paragraphs (c), (e), (f), (h) and (r) to read as follows:

§ 207.440 St. Marys Falls Canal and Locks, Mich.; use, administration, and navigation.

* * * * *

(c) *Approach requirements.* Upon approaching the canal, vessel masters shall request lock dispatch by radiotelephone to the Corps of Engineers Chief Lockmaster at St. Marys Falls Canal dispatch tower (Radio Call WUE–21). Every up bound vessel requiring lock transit shall request lock dispatch immediately before initiating the turn at Mission Point at the intersection of Course 1, Bayfield Channel, and Course 2, Little Rapids Cut. Every down bound vessel shall call when approximately one-half mile downstream from Big Point.

* * * * *

(e) (1) *Manning requirements.* On all vessels of 400 gross tons or over navigating the canal under their own power, the following ship's personnel shall be on duty. In the pilot house, on the bridge, the master. One mate and one able seaman shall be on watch and available to assist; in the engine room, the engineering watch officer. The chief engineer shall be available to assist. During transit of the locks, all vessels of 400 gross tons or over equipped with power operated mooring deck winches shall have, in addition to the winch operators, mates or signalman at the forward and after ends of the vessel to direct operations from points providing maximum vision of both the winch operators and canal linesmen.

(2) *Linehandlers.*—(i) *Cargo vessels equipped with bow thrusters and friction winches.* Two line handlers from the vessel are required on the piers under normal weather conditions. Lockmasters can ask for three persons under severe weather conditions. If a vessel is experiencing mechanical problems or in extreme severe weather situations, the lockmaster may require four vessel-supplied line handlers on the pier.

(ii) *Vessels with non-friction winches or lack of both bow and stern thrusters.* Four vessel-supplied line handlers are required on the pier at all times.

(f) *Vessel restrictions.*—(1) *Speed limits.* Within the limits of the canal, vessels approaching the locks shall not navigate at a speed greater than 2½ miles per hour, and vessels leaving the locks shall not navigate at a speed greater than 6 miles per hour. Tugs assisting vessels in passing through the locks may be authorized by the District Engineer or his authorized agents to navigate at a higher speed when considered necessary to expedite canal operations.

(2) *Use of bow/stern thrusters.* Bow and/or stern thruster use shall be kept to a minimum while transiting the Soo Locks. Thrusters shall not be used while the thrusters are opposite lock gates. They may be used sparingly for short durations within the lock to maintain the ship position near the mooring wall or in an emergency. Thrusters shall be at zero thrust during the period the ship is stopped and moored to the wall with all lines out, and during raising and lowering of pool levels within the chamber.

* * * * *

(h) *Vessel lockage order.*—(1) *Arrival.* All registered vessels will be passed through the locks in the order of their arrival at the dispatch point unless otherwise directed by the District Engineer or his authorized agents. When a vessel that has stopped on its own business is ready to proceed, it is not entitled to precedence over other vessels already dispatched.

(2) *Departure.* The following order of departure procedure will apply to vessels leaving the MacArthur Lock and Poe Lock simultaneously or at approximately the same time:

(i) The first vessel to leave will be the vessel in the lock which is ready for vessel release first. The vessel in the other lock will be restrained by the gates remaining closed and the wire rope fender remaining in the down position.

(A) On down bound passages, the vessel retained shall not leave the lock until such time as the bow of the vessel leaving first reaches the end of the East Center pier.

(B) On up bound passages, the vessel retained shall not leave the lock until such time as the bow of the vessel leaving first reaches the railroad bridge.

(ii) When a 1,000 foot vessel is ready to depart the Poe Lock and a vessel has left the MacArthur Lock already, the 1,000 foot vessel may start to leave once the bow of the other vessel reaches the end of the respective nose pier.

(iii) Vessels will remain in radio contact with each other and with the Chief Lockmaster at all times until clear of the lock area.

(iv) The need for a deviation from the procedures set forth in paragraph (h)(2)(i) of this section will be determined on a case by case basis by the Chief Lockmaster. If two vessels masters agree to a different departure scheme, they both shall notify the Chief Lockmaster and request a change.

* * * * *

(r) *Tug assist procedure.*—(1) *Self-powered vessels.* Mariners are advised that often times adverse local weather conditions, i.e., high winds, current conditions and/or inclement weather, exists as vessels approach, enter and/or

depart the Soo Locks. These conditions combined with close quarters slow speed maneuvering, particularly with large vessels not equipped with bow or stern thrusters, may cause control difficulties for certain classes of vessels. Therefore, any vessel requesting lockage which in the opinion of the vessel master in consultation with the pilot on board, where applicable may experience severe control problems due to the above conditions, must request assistance by one or more tugs to ensure full control over the vessel at all times. Vessel masters and pilots must consult with the lockmaster concerning local conditions well in advance of arrival at the lock to allow tug assistance to be arranged if necessary. These guidelines apply to all vessels.

(2) *Non self-powered vessels.* All barges or other vessels navigating within the canal and not operating under their own power, whether approaching or leaving the locks, are required to be assisted by one or more tugs of sufficient power to ensure full control at all times.

* * * * *

Dated: December 7, 1999.

Eric R. Potts,

Colonel, U.S. Army, Executive Director of Civil Works.

[FR Doc. 99–32037 Filed 12–10–99; 8:45 am]

BILLING CODE 3710–08–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 236–0197; FRL–6481–8]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Ventura County Air Pollution Control District, Project XL Site-specific Rulemaking for Imation Corp. Camarillo Plant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on September 8, 1999. The revisions concern Rule 37 ''Project XL'' from the Ventura County Air Pollution Control District (VCAPCD). This approval action will incorporate this rule into the Federally approved SIP. The intended effect of approving this rule is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act) and to facilitate implementation of the XL Project at Imation Corp. in Camarillo, CA. Such implementation will result in superior environmental performance and, at the same time, provide Imation with greater operational flexibility. EPA is finalizing the approval of this revision 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 action is effective on January 12, 2000.

ADDRESSES: Copies of the rule and EPA's evaluation report for the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule are available for inspection at the following locations:

(1) EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105

(2) California Air Resources Board, 2020 L Street, Sacramento, CA 95814

(3) Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: David Albright, Permits Office, [AIR–3], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. Telephone: (415) 744–1627. E-mail: albright.david@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being approved into the California SIP is VCAPCD Rule 37 (Project XL). This rule was submitted by the California Air Resources Board to EPA on October 29, 1999.

II. Background

On September 8, 1999 in 64 FR 48739, EPA proposed to approve VCAPCD Rule 37 into the California SIP. A detailed discussion of the background of this rule is provided in the proposed rule cited above.

EPA has evaluated VCAPCD Rule 37 for consistency with the requirements of the CAA and EPA regulations and EPA interpretation of these requirements. EPA has found that the rule meets the applicable EPA requirements. A detailed discussion of the rule provisions and evaluations has been provided in the proposed rule and in the technical support document (TSD), dated August 23, 1999, which is available at EPA's Region IX office.

III. Response to Public Comments

A 30-day public comment period was provided in 64 FR 48739. One set of comments was submitted to EPA during the comment period, which ended on October 8, 1999. The comments were submitted by the Environmental Coalition (EC) of Ventura County. A summarization of the EC's comments on the proposed rule and EPA's responses is provided below.

The Environmental Coalition made three recommendations in their submitted comments. Their first recommendation involves a concern raised by the EC that Imation will receive emission reduction credits (ERCs) for banking based on a reduction in their plantwide applicability limit (PAL) for reactive organic compounds (ROC). The EC recommends that any ERCs granted to Imation for an ROC PAL reduction should be forfeited if Ventura County does not meet its 2005 ozone attainment date.

EPA agrees that any banking of emission reduction credits must be done in accordance with the District's Banking Rule (Ventura County APCD Rule 26.4), which would not allow Imation to bank ERCs by reducing their ROC PAL to a lower level, unless Imation were emitting at the level of their PAL at the time of the banking request. Ventura County APCD Rule 37 (Project XL) specifically states at E.2 that ''Emission banking shall be conducted pursuant to Rule 26.'' Further, Imation's draft title V permit contains the following condition: ''If the permittee proposes to reduce the level of the PAL, any emissions banking shall be conducted pursuant to Rule 26, New Source Review. Emission reduction credits shall be determined from emission reduction calculations using the definition of actual emissions in Rule 26, at the time of the banking request.'' EPA believes that the Rule 37 and title V permit language is clear and that it will prevent any inappropriate banking of ERCs based on a reduction in Imation's ROC PAL.

The second recommendation of the Environmental Coalition is to add a fair and affordable appeal hearing process into Rule 37. The EC's underlying concern is that for certain types of permitting appeals, the Ventura County APCD rules require an upfront payment of fees by the appellant. According to the Environmental Coalition, this requirement precludes public participation due to the high costs involved, without any assurance of recovering the money even if the appeal is upheld.

EPA agrees with the principle that if a person appeals a decision to the Ventura County APCD Hearing Board and the appeal has merit and is successful, then the successful appellant should receive a refund of the fees paid for the appeal. Although EPA is aware that in the past there may have been instances where a successful appellant did not receive a refund of appeal fees, VCAPCD Rule 41 (Hearing Board Fees) states that the Hearing Board may waive all or part of the fees associated with an appeal if the Hearing Board reverses the decision of the Air Pollution Control Officer in an appeal. Thus, EPA believes that the current District rule is sufficient to provide for fee refunds to successful appellants.

As for the fairness of the District's appeal process, EPA believes that the District's Hearing Board is a neutral body, operating independently of the District staff, which is charged with adjudicating all appeals of District permitting decisions and that the Board should maintain that responsibility for any permit appeal under the Imation XL project as well. Thus, EPA agrees that the District's existing appeal procedures, in accordance with Rule 41 and all other relevant District rules and regulations, should remain applicable to the Imation XL project. Moreover, EPA believes that for the types of issues that could potentially be raised in an appeal to the Hearing Board (e.g., a significant permit modification), there are existing federal appeal procedures pertaining to title V sources that will also remain in place. These federal procedures, which do not involve the payment of appeal fees, are in place to guarantee citizens' rights to appeal initial title V permits, significant permit modifications, and title V permit renewals.

The Environmental Coalition's third recommendation is that EPA should conduct an environmental review of Rule 37 because of its precedent setting nature and the potential for significant increases in air pollution resulting from numerous other companies applying for ERCs from years when their emissions were much higher.

First, as noted above in response to the Environmental Coalition's first recommendation, Rule 37 requires that any banking of ERCs be done in accordance with the District's banking regulations, which bases ERC calculations on actual emissions at the time of the banking request. Thus, Imation will be treated no differently under Rule 37 (which requires banking pursuant to Rule 26) than any other company with respect to the application for, and granting of, ERCs. Second, EPA has evaluated Rule 37 and has determined that it is consistent with the Clean Air Act and EPA regulations. A detailed discussion of the rule provisions and EPA's evaluation of Rule 37 is provided in the proposed rule (64 FR 48739) and in the technical support document (TSD), dated August 23, 1999, which is available at EPA's Region IX office. Finally, as noted in EPA's proposal, approval of this SIP revision should not 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 the relevant statutory and regulatory requirements.

IV. EPA Action

EPA is finalizing this action to approve the above rule for inclusion into the California SIP. EPA is approving the submittal under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D. This approval action will incorporate this rule into the Federally approved SIP. The intended effect of approving this rule is to implement the Imation XL Project in accordance with the requirements of the CAA. This plan revision is not intended to address any outstanding issues with the Ventura County APCD NSR program that will be the subject of a future EPA rulemaking on District Rule 26.

V. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule 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, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order 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, Consultation and Coordination with Indian Tribal Governments, 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 mandate is unfunded, EPA must provide to the Office of Management and Budget, in a

separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. 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. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. section 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability (i.e., it applies only to a specifically named entity). A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. 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 February 11, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, 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: November 16, 1999.

Felicia Marcus,

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)(268), (269), and (270) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(268) [Reserved]

(269) [Reserved]

(270) New and amended regulations for the following APCDs were submitted on October 29, 1999, by the Governor's designee.

(i) Incorporation by reference.

(A) Ventura County Air Pollution Control District.

(*1*) Rule 37 adopted September 14, 1999.

* * * * *

[FR Doc. 99–30902 Filed 12–10–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300952; FRL–6396–3]

RIN 2070–AB78

2,4-dichlorophenoxyacetic Acid; Re-establishment of Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation re-establishes time-limited tolerances for residues of the herbicide 2,4-dichlorophenoxyacetic acid (2,4-D) in or on wild rice at 0.1 parts per million. This tolerance expired on August 31, 1998. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on wild rice. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18.

DATES: This regulation becomes effective December 13, 1999. Objections and requests for hearings must be received by EPA, on or before February 11, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300952 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Jacqueline Gwaltney, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 271, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703–305–6792, gwaltney.jackie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, 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 OPP–300952. The official record consists of the documents specifically referenced in this action, 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of September 5, 1997 (62 FR 46900) (FRL–5738–9), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a and (l)(6), as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established time-limited tolerances for the residues of 2,4-D in or on wild rice at 0.1 ppm with an expiration date of August 31, 1998. EPA established the tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment.

EPA received requests to extend the use of 2,4-D on wild rice for this year's growing season due to the continued emergency conditions for wild rice. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of 2,4-D on wild rice for control of waterplantain.

EPA assessed the potential risks presented by residues of 2,4-D in or on wild rice. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of September 5, 1997 (62 FR 46900) (FRL–5738–9). Based on that data and information considered, the Agency reaffirms that re-establishment of the time-limited tolerances will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerances are re-established with an expiration date of December 31, 2000 for wild rice. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of

Federal Regulations (CFR). Although the tolerance on wild rice will expire and will be revoked on December 31, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on wild rice after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerances. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300952 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before February 11, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. M3708, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–300952, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

This final rule re-establishes a time-limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children*

from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). This 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). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

V. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: December 2, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

§ 180.142 [Amended]

2. In § 180.142, by amending the table in paragraph (b) by revising the date ''08/31/98'' to read ''12/31/00.''

[FR Doc. 99–32182 Filed 12–10–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300939; FRL–6388–4]

RIN 2070–AB78

Clomazone; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerances for residues of clomazone in or on rice (grain and straw). This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on rice. This regulation establishes a maximum permissible level for residues of clomazone in this food commodity. The tolerance will expire and is revoked on December 31, 2001.

DATES: This regulation is effective December 13, 1999. Objections and requests for hearings, identified by docket control number OPP–300939, must be received by EPA on or before February 11, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VII. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300939 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: David Deegan, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–9358; and e-mail address: Deegan.Dave@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.*You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, 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 OPP–300939. The official record consists of the documents specifically referenced in this action, 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 Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for residues of the herbicide clomazone, in or on rice, grain and in or on rice, straw at 0.05 part per million (ppm). These tolerances will expire and be revoked on December 31, 2001. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

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

Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (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 the Food Quality Protection Act of 1996 (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Clomazone on Rice and FFDCA Tolerances

Several of the rice-producing States in the southern U.S. petitioned EPA to authorize the use of clomazone to control barnyard grass in rice. The applicants chronicled an ongoing problem faced by rice growers, whereby control of barnyard grass is difficult with currently registered alternative products, either due to limited efficacy, resistance development, or unforseen and undesirable environmental repercussions due to their application. EPA has authorized under FIFRA section 18 the use of clomazone on rice for control of barnyard grass in Arkansas, Louisiana, Mississippi, Missouri, and Texas. After having reviewed the submissions, EPA concurs that emergency conditions exist in these States.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of clomazone in or on rice. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6). Although this tolerance will expire and is revoked on December 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on rice after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether clomazone meets EPA's registration requirements for use on rice or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of clomazone by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than Arkansas, Louisiana, Mississippi, Missouri, and Texas to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for clomazone, contact the Agency's Registration Division at the address provided under ''FOR FURTHER INFORMATION CONTACT.''

IV. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of clomazone and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for residues of

clomazone on rice (grain and straw) at 0.05 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

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

B. Toxicological Endpoint

1. *Acute toxicity*. In reviews of the toxicological characteristics of clomazone, no toxicological endpoint was identified for acute oral toxicity. Therefore, no acute aggregate risk assessment is required.

2. *Short- and intermediate-term toxicity*. For short- and intermediate-term MOE calculations, EPA has used the maternal NOAEL of 100 mg/kg/day from the rat oral developmental toxicity study. At the LOAEL of 300 mg/kg/day, there were abdominal stains and decreased locomotion.

3. *Chronic toxicity*. EPA has established the Reference Dose (RfD) for clomazone at 0.043 milligrams/kilograms/day (mg/kg/day). This RfD is based on a 2–year feeding study in rats with a NOAEL of 4.3 mg/kg/day and an uncertainty factor of 100, based on increased liver weights and serum cholesterol at the LOAEL of 21.5 mg/kg/day. For this risk assessment, EPA has also used the chronic PAD (Population Adjusted Dose) of 0.0043 mg/kg/day.

4. *Carcinogenicity*. Clomazone has not been classified by EPA in regards to carcinogenicity. However, there are no reported cancer concerns present at this time, and EPA has reviewed studies indicating that clomazone is negative for cancer in two species.

C. Exposures and Risks

1. *From food and feed uses*. Tolerances have been established (40 CFR 180.425) for the residues of clomazone, in or on a variety of raw agricultural commodities, including snap beans, cottonseed, soybeans, peppers, sweet potatoes, and peas (succulent) at 0.05 ppm and pumpkins, winter and summer squash, cucumbers, and cabbage at 0.1 ppm. A time-limited tolerance for residues of clomazone in/on watermelons at 0.1 ppm is established in conjunction with a previous section 18 emergency exemption authorization. Risk assessments were conducted by EPA to assess dietary exposures and risks from clomazone as follows:

i. *Acute exposure and risk*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. Toxicity observed in oral toxicity studies were not attributable to a single dose or 1 day exposure. Therefore, no toxicological endpoint was identified for acute toxicity and no acute dietary risk assessment is required.

ii. *Chronic exposure and risk*. The Agency conducted a chronic dietary exposure analysis and risk assessment. The chronic analysis for exposure to clomazone residues used a chronic PAD of 0.0043 mg/kg/day. The analysis evaluated individual food consumption as reported by respondents in the USDA 1989–92 ''Continuing Surveys of Food Intake by Individuals'' and accumulates exposure to the chemical for each commodity. Tolerance level residues and 100 percent crop treated (%CT) assumptions were made for the proposed commodities of these emergency exemptions, and all other commodities with tolerances for residues of clomazone, in order to estimate the Theoretical Maximum Residue Contribution (TMRC) for the general population and subgroups of interest. The existing clomazone tolerances (published, pending, and including the necessary time-limited tolerance in support of the emergency exemptions related to this action) result in a TMRC that is equivalent to the following percentages of the chronic PAD:

Summary: Chronic Exposure Analysis by the DEEM System

Population Subgroup	Exposure (mg/kg/day)	Percent Chronic PAD
U.S. Population (48 contiguous States)	0.000079	1.8%
All Infants (<1 year old)	0.000028	6.6%
Nursing Infants (<1 year old)	0.000044	1.0%
Non-Nursing Infants (<1 year old)	0.00039	9.0%
Children (1–6 years old)	0.00015	3.4%
Children (7–12 years old)	0.000095	2.2%

2. *From drinking water*. EPA conducted an assessment of Tier I estimated environmental concentrations (EECs) of clomazone for the highest registered use rate, and in this review EPA concluded that clomazone is metabolized slowly in soil under aerobic conditions and is potentially to relatively mobile. Clomazone is somewhat more labile under anaerobic conditions. The proposed use is expected to pose significant risk to surface water resources.

i. *Ground water*. EPA's clomazone ground water estimated environmental concentration (EEC) is based upon SCI-GROW2 modeling (Screening Concentration In Ground Water). SCI-GROW2 is a prototype model for estimating ''worst case'' ground water concentrations of pesticides. SCI-GROW2 estimates are based on the fate properties of the pesticide, the application rate, and the existing body of data from small-scale ground water monitoring studies. The model assumes that the pesticide is applied at its maximum rate in areas where the ground water is particularly vulnerable to contamination. In most cases, a considerable portion of any use area will have ground water that is less vulnerable to contamination than the areas used to derive the SCI-GROW2 estimates. SCI-GROW2 estimates are biased in that studies where the pesticide is not detected in ground water are not included in the data set. Thus, it is not expected that SCI-GROW2 estimates would be exceeded.

The SCI-GROW2 model estimates that the concentration of clomazone in ground water is not likely to exceed an acute and chronic EEC of 0.97 µg/L for the proposed application rate of 0.6 pound (lb) active ingredient per acre (ai/acre) with a maximum of one application.

ii. *Surface water*. EPA used the Generic Expected Environmental Concentration (GENEEC) model to determine concentrations of clomazone in surface water. GENEEC is used to estimate pesticide concentrations in

surface water for up to 56 days after a single runoff event. GENEEC simulates a 1 hectare by 2 meters deep edge-of-the-field farm pond (with no outlet) which receives pesticide runoff from a treated 10 hectare field. GENEEC provides an upper-bound concentration value. GENEEC can substantially overestimate (by a ≧3-fold factor) true pesticide concentrations in drinking water. GENEEC does have certain limitations and is not the ideal tool for use in drinking water risk assessments. However, it can be used in screening calculations and does provide an upper bound value for the concentration of pesticides that can be found in drinking water. Since GENEEC can substantially overestimate true drinking water concentrations, it will be necessary to refine the GENEEC estimate when the drinking water levels of comparison are exceeded. In those situations where the level of comparison is exceeded and the GENEEC value is a substantial part of the total exposure, EPA can use a variety of methods to refine the exposure estimates. Using the GENEEC model and available environmental fate data, EPA calculated the Tier 1 chronic (56–day) EEC for clomazone would be 16.1 µg/L based on a total annual use rate of 0.6 lb ai/acre (i.e. 1 application at 0.6 lb ai/acre). See IV.D. for discussion of how these exposure values have been addressed in the risk assessment for this tolerance-setting action.

iii. *Chronic exposure and risk.* Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water-related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfDs or acute dietary no observed adverse effect levels (NOAELs)) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for exposure from contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause clomazone to exceed the RfD if the tolerance being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with clomazone in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the tolerance is granted.

3. *From non-dietary exposure.* Clomazone is currently not registered for use on residential non-food sites. Thus, a residential exposure assessment for clomazone is not required.

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

Clomazone is a member of the pyridazones/pyridinones class of herbicides. Other members of this class include purazon, norflurazon, fluridone, oxadiazon, fluorochloridone, amitrol, and dithiopyr. EPA does not have, at this time, available data to determine whether clomazone has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, clomazone does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that clomazone has a common mechanism of toxicity with other substances. For more information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

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

1. *Drinking water assessment.* In the absence of drinking water monitoring data, EPA assesses the aggregate dietary risk by using the worst-case scenario of EECs found from either ground or surface water. The EECs reported for clomazone residues in ground water using SCI-GROW2 is 0.97 µg/L. This is much less than the surface water EEC (16.1 µg/L for chronic risk assessment) generated using GENEEC. Therefore, only the surface water EEC for clomazone will be used for purposes of comparing with the calculated drinking water levels of comparison (DWLOC).

2. *Acute risk.* No toxicological endpoint was identified for acute oral toxicity. Therefore, no acute aggregate risk assessment is required.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. No short- or intermediate-term oral toxicological endpoints were identified. Also, clomazone has no residential uses. Thus, no risk assessments were conducted for short- and intermediate-term exposure.

4. *Chronic risk* —i. *Food only.* Using the conservative TMRC exposure assumptions described above, and taking into account the completeness and reliability of the toxicity data, EPA has determined that chronic dietary exposure to clomazone residues from food will utilize up to a maximum of 9.0% (for the population subgroup non-nursing infants) of the chronic PAD for subgroups including infants and children (see additional discussion below), and up to a maximum of 2.5% of the chronic PAD for subgroups including adults. Chronic dietary exposure to clomazone residues from food for all other population subgroups results in utilization of a smaller percentage of the chronic PAD.

ii. *Water only.* Based on the chronic dietary (food only) exposure, chronic (non-cancer) DWLOCs were calculated. To calculate the chronic DWLOCs, the chronic dietary food exposure (from the DEEM analysis) was subtracted from the chronic PAD to give the maximum allowable exposure level for drinking water. DWLOCs were then calculated using the default body weights and drinking water consumption figures.

iii. *Food plus water.* The estimated 56–day concentration of clomazone in surface water (16.1 µg/L) is less than EPA's levels of comparison for clomazone in drinking water as a contribution to chronic aggregate exposure (1.5 x 102 µg/L for adult males, 1.3 x 102 µg/L for adult females, and 39 µg/L for infants/children). Therefore, taking into account the registered uses and the use proposed in the emergency exemptions resulting in this tolerance-setting action, EPA concludes with reasonable certainty that residues of clomazone in drinking water (when considered along with other sources of chronic exposure for which EPA has reliable data) would not result in unacceptable levels of chronic aggregate human health risk estimates

for adult and infants/children population subgroups at this time.

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

EPA generally has no concern for exposures below 100% of the chronic PAD because the chronic PAD represents the level at or below which average daily life-time exposure will not pose appreciable risks to human health. Despite the potential for exposure to clomazone in drinking water, EPA does not expect the chronic aggregate exposure to exceed 100% of the chronic PAD for population subgroups which include adults, infants, or children. EPA concludes that there is a reasonable certainty that no harm will result to adults and infants or children from chronic aggregate exposure to clomazone residues.

4. *Aggregate cancer risk for U.S. population*. Clomazone has not been classified by EPA in regards to carcinogenicity. However, there are no reported cancer concerns at this time and clomazone is negative for cancer in two species studies. Thus, a cancer risk assessment was not performed for this chemical.

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

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

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

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

Information concerning the possibility of enhanced sensitivity of infants and children when exposed to clomazone has not yet been presented to, and/or reviewed by, EPA. Therefore, EPA has assumed that the FQPA Safety Factor (for enhanced sensitivity of infants and children as required by the FQPA) has been retained and is applicable to all oral endpoints for the purposes of this tolerance-setting action.

ii. *Developmental toxicity studies —a. Rat*. From the rat developmental toxicity study, the maternal (systemic) NOAEL was 100 mg/kg/day, based on decreased locomotion and abdominal staining at the LOAEL of 300 mg/kg/day. The developmental (pup) NOAEL was 100 mg/kg/day, based on delayed ossification at the LOAEL of 300 mg/kg/day.

b. Rabbit. From the rabbit developmental toxicity study, the maternal (systemic) NOAEL was 240 mg/kg/day, based on decreased body weight gain at the LOAEL of 700 mg/kg/day. The developmental (pup) NOAEL was 700 mg/kg/day at the highest dose tested.

iii. *Reproductive toxicity study — Rat*. From the rat reproductive toxicity study, the maternal (systemic) NOAEL was 50 mg/kg/day, based on decreased body weight, food consumption, clinical signs, and organ weight changes at the LOAEL of 100 mg/kg/day. The reproductive (pup) NOAEL was 5 mg/kg/ day, based on decreased pup viability, reduced survival, and decreased body weight at the LOAEL of 50 mg/kg/day.

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

2. *Chronic risk*. Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to clomazone from food will utilize (no greater than 9%) of the cPAD for infants and children. EPA generally has no concern for exposures below 100% of the cPAD, because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to clomazone in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

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

V. Other Considerations

A. Metabolism in Plants and Animals

The nature of the residue in plants and animals is adequately understood. The residue of concern is clomazone *per se* as specified in 40 CFR 180.425.

B. Analytical Enforcement Methodology

Adequate enforcement methodology (GLC/NPD or GLC/MS) are available (PAM II) for enforcement of clomazone residues. Additionally, clomazone is adequately recovered (>80%) via the FDA Multiresidue Methods of PAM I (Pestrak, 1990).

C. Magnitude of Residues

1. Residues of clomazone *per se* are not expected to exceed 0.05 ppm in/on rice, grain and rice, straw. Time-limited tolerances are hereby being established at this level.

2. A rice processing study has been reviewed by EPA. In this review, EPA has concluded that residues of clomazone do not concentrate when rice grain containing detectable residues is processed into polished rice, hulls, and

bran. Thus, tolerances are not required for processed rice products.

3. A review of this use concluded that residues in meat, milk, poultry and, eggs are not expected.

D. International Residue Limits

There are no Codex, Canadian or Mexican limits for clomazone in/on rice commodities. Therefore, compatibility problems are not expected from the establishment of a tolerance for clomazone on rice commodities.

E. Rotational Crop Restrictions

Adequate rotational crop restrictions are included on the label for Command 3ME. These restrictions state that cotton, peas, peppers, pumpkins, soybeans, and tobacco may be rotated at anytime. After 9 months the following crops may be rotated: cotton, dry beans, sweet potatoes, corn (filed, pop, seed and sweet), peanuts, tomatoes (transplanted), potatoes, cucurbits, rice, sugar beets, snap beans, and sorghum. After 12 months all crops may be rotated. The label also includes the statement ''do not graze or harvest for food or feed cover crops planted less than 9 months after Command 3ME treatment.''

VI. Conclusion

Therefore, the tolerance is established for residues of clomazone in rice at 0.05 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300939 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before February 11, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. M3708, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by the docket control number OPP–300939, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Regulatory Assessment Requirements

This final rule establishes a time-limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections

subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This 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). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

IX. Submission to Congress and the General Accounting Office

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

List of Subjects in 40 CFR Part 180

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

Dated: November 24, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.425, by alphabetically adding to the table in paragraph (b), the following commodities to read as follows:

§ 180.425 Clomazone; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/revocation date
Rice, grain	0.05	12/31/01
Rice, straw	0.05	12/31/01
* * * * *		

* * * * *

[FR Doc. 99–32183 Filed 12–10–99; 8:45 am]

BILLING CODE 6560–50–F

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1815

Requiring Information Other Than Cost or Pricing Data; Correction of Inconsistency

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule amends the NASA FAR Supplement (NFS) to identify a FAR exception to NASA's prohibition against requesting information other than cost or pricing data in a solicitation when a firm-fixed-price competition is involved.

EFFECTIVE DATE: December 13, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Le Cren, NASA Headquarters, Code HK, Washington, DC 20546; Telephone: (202) 358-0444; email: joseph.lecren@hq.nasa.gov.

SUPPLEMENTARY INFORMATION:

A. Background

The NFS coverage at 1815.403–3(b) prohibits requesting information other

than cost or pricing data in the solicitation where a competitive firm-fixed-price acquisition is involved. However, FAR 22.1103 requires the provision at 52.222–46, Evaluation of Compensation for Professional Employees, be inserted in solicitations for negotiated service contracts when the contract amount is expected to exceed $500,000 and the service to be provided will require meaningful numbers of professional employees. This provision requires offerors to provide certain information that is considered to be information other than cost or pricing data, and it applies to competitive firm-fixed-price acquisitions. The result is an inconsistency between the FAR and the NFS coverage.

The final rule eliminates this inconsistency by recognizing the FAR 22.1103 requirement as an exception.

B. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* because this does not impose any new requirements beyond those already required by the FAR .

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose any recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 1815

Government procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR Part 1815 is amended as follows:

1. The authority citation for 48 CFR part 1815 continues to read as follows:

Authority: 42 U.S.C. 2743(c)(1).

PART 1815—CONTRACTING BY NEGOTIATION

2. Section 1815.403–3 is revised to read as follows:

1815.403–3 Requiring information other than cost or pricing data.

* * * * *

(b) As indicated in 1815.403–1(b)(1), the adequate price competition exception applies to all competitive acquisitions. For other than firm-fixed price competitions, only the minimum information other than cost or pricing data necessary to ensure price reasonableness and assess cost realism should be requested. For firm-fixed price competitions, the contracting officer shall not request any cost information, except as required by FAR 22.1103, unless proposed prices appear unreasonable or unrealistically low given the offeror's proposed approach and there are concerns that the contractor may default.

[FR Doc. 99–32221 Filed 12–10–99; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No.99120 7322–9322–01; I.D.120399A]

RIN 0648–AN30

Sea Turtle Conservation; Shrimp Trawling Requirements

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

ACTION: Temporary rule; request for comments.

SUMMARY: NMFS is imposing, for a 30-day period, an additional restriction on shrimp trawlers required to have a turtle excluder device (TED) installed in each net that is rigged for fishing, operating in Atlantic offshore waters out to 10 nautical miles (nm)(18.3 km) from the coast of Florida between 28° N. latitude and the Georgia-Florida border. Shrimp vessels operating in this area must use a TED with 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 December 8, 1999 through January 7, 2000. Comments on this action are requested, and must be received by January 7, 2000.

ADDRESSES: Comments on this action should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

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:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. Loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

The incidental take of these species as a result of shrimp trawling activities has been documented in the Gulf of Mexico and in the Atlantic Ocean. Under the Endangered Species Act (ESA) and its implementing regulations, taking sea turtles is prohibited, with exceptions identified in 50 CFR 223.206. Existing sea turtle conservation regulations (50 CFR part 223, subpart B) require most shrimp trawlers operating in the Gulf and Atlantic areas to have a NMFS-approved TED installed in each net rigged for fishing, year-round.

The regulations provide a mechanism to implement further restrictions of fishing activities, if necessary to avoid unauthorized takings of sea turtles that may be likely to jeopardize the continued existence of listed species or that would violate the terms and conditions of an incidental take statement or incidental take permit. Upon a determination that incidental takings of sea turtles during fishing activities are not authorized, additional restrictions may be imposed to conserve listed species and to avoid unauthorized takings. Restrictions may be effective for a period of up to 30 days and may be renewed for additional periods of up to 30 days each (50 CFR 223.206(d)(4)).

Leatherback Sea Turtles

Leatherback sea turtles are the largest species of sea turtle. They weigh between 600 and 1300 pounds (272 and 590 Kg) and have carapaces 5 to 6 ft (1.5 to 1.8 m) in length. Leatherbacks are widely distributed and can range from the tropics to sub-Arctic waters during their feeding migrations. They nest in low numbers on U.S. beaches and are primarily seen in coastal waters of the southeast U.S. during their northern springtime migration, especially when high abundances of jellyfish occur nearshore. However, they can be found in U.S. waters throughout the year.

Because of their size, leatherbacks are not likely to escape from trawls, even when equipped with approved TEDs. The sea turtle conservation regulations specify a minimum TED opening size in the Atlantic of 35 inches (89 cm) horizontally and 12 inches (30.5 cm) vertically. When the regulations requiring TEDs in shrimp trawls year-round were adopted (57 FR 57348, December 4, 1992), NMFS recognized that the then-existing TEDs would not protect leatherbacks, and the biological opinion on the regulations concluded that leatherback mortality would remain a problem that must be addressed to avoid jeopardizing the recovery of this species. Consequently, the August 19, 1992, biological opinion's incidental take statement included as a term and condition which specified that the episodic take of leatherback turtles by shrimp trawlers during periods of high jellyfish abundance must be eliminated. This could be accomplished by temporary area closures, by requiring an increase in size of TED openings to allow leatherbacks to escape at times when their abundance is high, by limiting tow times, or by implementing some other protective measure. In part, to address this problem, the 1992 sea turtle conservation regulations included the provisions of 50 CFR 223.206(d)(4), to provide ''a mechanism to prevent sea turtle mortalities * * *when existing restrictions on the shrimp fishery are found to be ineffective (57 FR 18453).''

Recent Events

NMFS has been notified by the Florida Fish and Wildlife Conservation Commission that extraordinarily high numbers of endangered leatherback sea turtles stranded along northeast Florida beaches in November 1999. From October 28 to November 29, a total of 15 leatherback turtles have washed ashore from Nassau through Brevard counties in shrimp zones 28, 29, and 30. By comparison, the total annual number of leatherbacks stranding statewide has averaged 23 over the past 10 years, and has averaged only 3 in zones 28–30 in November. Considering the rarity of leatherbacks—an average of only 45–50 females nest in Florida each year—and the fact that strandings are only a minimum estimate of actual mortality, these strandings represent a serious impact to the recovery and survival of the local population.

The late fall and early winter is traditionally a major shrimping season along northeast Florida, when shrimp leave the estuaries to the north and migrate southward along the coast as waters cool. Shrimp fishing along the coast is currently active. The Florida Marine Patrol has been responding to citizen complaints about shrimp trawlers fishing too near the beach or at night, in violation of state fishing requirements. The trawlers have been reported in the same areas as the leatherback strandings. The minimum size for TED openings specified in the sea turtle conservation regulations is not large enough to release leatherback turtles, and capture and drowning in shrimp trawls is the likely cause of the leatherback strandings. Even if shrimp trawling were not the cause of the strandings observed thus far, the high leatherback mortality level indicates that leatherbacks are present in unexpectedly high abundance on and near the shrimping grounds. Shrimp trawling with TEDs with openings that are not large enough to release leatherbacks would be expected to continue to unnecessarily take leatherbacks.

Analysis of Other Factors

Examination of the strandings in northeast Florida does not indicate any significant sources of mortality other than shrimp trawling. The carcasses have primarily been coming ashore in the vicinity of areas where shrimping effort has been concentrated. NMFS and state personnel will continue to investigate factors other than shrimping that may contribute to leatherback sea turtle mortality in Florida, including other fisheries and environmental factors.

Restrictions on Fishing by Shrimp Trawlers

Pursuant to 50 CFR 223.206(d)(4), the exemption for incidental taking of sea turtles in 50 CFR 223.206(d) does not authorize incidental takings during fishing activities if the takings would violate the restrictions, terms or conditions of an ITS or incidental take permit, or may be likely to jeopardize the continued existence of a species listed under the ESA. The August 19, 1992, biological opinion includes a condition under the ITS that specifies that NMFS must eliminate the episodic take of leatherback turtles by shrimp trawlers through area closures, requirements for large TED opening sizes, limitations on tow times, or some other protective measure. Failure by NMFS to take action to address the significant and ongoing level of mortality seen in northeast Florida over the past month clearly would violate the ITS and result in unauthorized takings. Therefore, the Assistant Administrator for Fisheries, NOAA (AA) issues this determination that further takings of leatherback turtles in Atlantic Ocean waters off northeast Florida by shrimp trawlers using TEDs with small escape openings are unauthorized and imposes this additional restriction to shrimp trawling activities to conserve endangered leatherback sea turtles. Specifically, the AA closes all Atlantic offshore waters within 10 nm (18.5 km) seaward of the COLREGS demarcation line, bounded on the south by 28° N. lat. and on the north by 30°42'45.6'' N. lat. (the Georgia-Florida border), 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. This restriction is effective from December 8, 1999 through 11:59 p.m. (local time) January 7, 2000.

This restriction has been announced on the NOAA weather channel, in newspapers, and other media. Shrimp trawlers may also call (727)570–5312 for updated area closure information.

Additional Conservation Measures

The AA may withdraw or modify a determination concerning unauthorized takings or any restriction on shrimping activities if the AA determines that such action is warranted. Notification of any additional sea turtle conservation measures, including any extension of this 30-day action, will be published in the **Federal Register** pursuant to 50 CFR 223.206(d)(4).

NMFS will continue to monitor sea turtle strandings to gauge the effectiveness of these conservation measures.

Classification

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

The AA has determined that this action is necessary to respond to an emergency situation to provide adequate protection for endangered leatherback sea turtles pursuant to the ESA and other applicable law.

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 this action in a timely manner to protect endangered leatherback sea turtles. Notice and

opportunity to comment was provided on the proposed rule (57 FR 18446, April 30, 1992) for the final rule establishing the procedures to take this action. Furthermore, the AA finds good cause also under 5 U.S.C. 553(d)(3) not to delay the effective date of this rule for 30 days. Such delay would also prevent the agency from implementing this action in a timely manner to protect endangered leatherback sea turtles. Accordingly, the AA is making the rule effective December 8, 1999 through January 7, 2000. Also as stated above, this restriction has been announced on the NOAA weather channel, in newspapers, and other media.

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 (57 FR 57348, December 4, 1992) requiring TED use in shrimp trawls and creating the regulatory framework for the issuance of notifications such as this. Copies of the EA are available (see **ADDRESSES**).

Dated: December 8, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–32154 Filed 12–8–99; 2:22 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 238
Monday, December 13, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 955

[Docket No. FV00–955–1 PR]

Vidalia Onions Grown in Georgia; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal would increase the assessment rate established for the Vidalia Onion Committee (Committee) for fiscal period 2000 and subsequent fiscal periods from $0.07 to $0.10 per 50-pound bag of Vidalia onions handled. The Committee is responsible for local administration of the marketing order which regulates the handling of Vidalia onions grown in Georgia. Authorization to assess Vidalia onion handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins on January 1 and ends December 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by January 12, 2000.

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

FOR FURTHER INFORMATION CONTACT: William Pimental, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276; telephone: (863) 299–4770, Fax: (863) 299-5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 955 (7 CFR part 955), regulating the handling of Vidalia onions grown in Georgia area, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Vidalia onion handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable Vidalia onions beginning on January 1, 2000, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule would increase the assessment rate established for the Committee for the fiscal period 2000 and subsequent fiscal periods from $0.07 to $0.10 per 50-pound bag of Vidalia onions handled.

The Vidalia onion marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Vidalia onions. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1998–99 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on September 30, 1999, and unanimously recommended fiscal period 2000 expenditures of $421,600 and an assessment rate of $0.10 per 50-pound bag of Vidalia onions. In comparison, 1998–99 budgeted expenditures were $373,577. However, during the 1998–99 fiscal period the Committee recommended and the Department approved a change in the fiscal period under the order to January 1–December 31 from September 16–September 15 to make the fiscal period consistent with the Vidalia onion marketing season (64 FR 48243, September 3, 1999). To provide for continuous operation of the order, the 1998–99 fiscal period was extended by 3 and ½ months (from September 16 to

December 31, 1999). As a result, actual expenditures for 1998–99 are expected to total about $475,577. In addition, the quantity of assessable onions for 1998–99 and assessment income is much less than expected. The Committee projected the quantity of assessable onions for 1998–99 at 4,842,857 50-pound bags and assessment revenue at $339,000. The actual quantity of assessable onions is expected to be 3,617,017 50-pound bags, and assessment revenue is expected to total $253,191. Because of this shortfall, the Committee will have to use more of its operating reserve to cover approved expenses than it expected.

The assessment rate of $0.10 is $0.03 higher than the rate currently in effect. The increase is needed so the Committee can maintain its operating reserve at an acceptable level, and to cover increases in the Committee's promotion expenses for fiscal period 2000.

The major expenditures recommended by the Committee for fiscal period 2000 include $135,127 for administrative costs, $31,800 for compliance activities, $175,000 for promotional activities, and $47,000 for research projects. Budgeted expenses for these items in 1998–99 (including the 3½ month extension) are $151,127 for administrative costs, $37,850 for compliance activities, $161,600 for promotional activities, and $125,000 for research projects.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Vidalia onions. Onion shipments for fiscal period 2000 are estimated at 4,200,000 50-pound bags or equivalent which should provide $420,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses for fiscal period 2000. Funds in the reserve (currently projected to be $83,000 on December 31, 1999), would be kept within the maximum permitted by the order (about three fiscal period's budgeted expenses; § 955.44).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's fiscal period 2000 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by the Department.

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

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

There are approximately 133 producers of Vidalia onions in the production area and approximately 91 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on the Georgia Agricultural Statistical Service and committee data, the average price for fresh Vidalia onions during the 1998–99 season was $15.45 per 50-pound bag or equivalent and total shipments were 3,617,017 bags. Approximately 28 percent of all handlers handled 83 percent of Vidalia onion shipments. Many Vidalia onion handlers ship other vegetable products which are not included in the committee data but would contribute further to handler receipts.

Using the average price, about 97.4 percent of the Vidalia onion handlers could be considered small businesses under the SBA definition. The majority of Vidalia Onion producers and handlers may be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for fiscal period 2000 and subsequent fiscal periods from $0.07 to $0.10 per 50-pound bag or equivalent of assessable onions. The Committee unanimously recommended fiscal period 2000 expenditures of $421,600 and an assessment rate of $0.10 per 50-pound bag or equivalent. The proposed assessment rate of $0.10 is $0.03 higher than the 1998–99 rate. The quantity of assessable Vidalia onions for fiscal period 2000 is estimated at 4,200,000 50-pound bags. Thus, the $0.10 rate should provide $420,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, would be a dequate to cover budgeted expenses.

The major expenditures recommended by the Committee for fiscal period 2000 include $135,127 for administrative costs, $31,800 for compliance activities, $175,000 for promotional activities, and $47,000 for research projects. Budgeted expenses for these items in 1998–99 (including the 3½ month extension) were $151,127 for administrative costs, $37,850 for compliance activities, $161,600 for promotional activities, and $125,000 for research projects.

As mentioned earlier, in an effort to recover from its assessment income shortfall in 1998–99, maintain its operating reserve at an acceptable level, and expand its promotion activities, the Committee voted unanimously to increase its assessment rate to cover operating expenses during fiscal period 2000. The Committee believes that increased promotion activities are needed to help the Vidalia onion industry remain competitive in the marketplace.

The Committee reviewed and unanimously recommended fiscal period 2000 expenditures of $421,600. Prior to arriving at this budget, the Committee considered information from various sources, such as the Budget Subcommittee, the Research Subcommittee, and the Advertising and Promotion Subcommittee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various promotion and research projects to the Vidalia onion industry. The assessment rate of $0.10 per 50-pound bag or equivalent of assessable Vidalia onions was then determined by dividing the total recommended budget by the quantity of assessable onions, estimated at 4,200,000 50-pound bags for fiscal period 2000. This rate will generate $420,000, which is $1,600

below the anticipated expenses. The Committee found this acceptable because interest income and reserve funds are available to make up the deficit.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for fiscal period 2000 could range between $10.00 and $15.00 per 50-pound bag of Vidalia onions. Therefore, the estimated assessment revenue for fiscal period 2000 as a percentage of total grower revenue could range between 0.7 and 1.0 percent.

While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Vidalia onion production area and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the September 30, 1999, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Vidalia onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2000 fiscal period begins on January 1, 2000, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable Vidalia onions handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 955

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 955 is proposed to be amended as follows:

PART 911—VIDALIA ONIONS GROWN IN GEORGIA

1. The authority citation for 7 CFR parts 955 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 955.209 is revised to read as follows:

§ 911.209 Assessment rate.

On and after January 1, 2000, an assessment rate of $0.10 per 50-pound bag or equivalent is established for Vidalia onions.

Dated: December 7, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–32233 Filed 12–10–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket No. FV–00–985–1 PR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2000–2001 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would establish the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 2000–2001 marketing year, which begins on June 1, 2000. This rule invites comments on the establishment of salable quantities and allotment percentages for Class 1 (Scotch) spearmint oil of 1,211,207 pounds and 65 percent, respectively, and for Class 3 (Native) spearmint oil of 1,033,648 pounds and 50 percent, respectively. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices, and thus help to maintain stability in the spearmint oil market.

DATES: Comments must be received by January 12, 2000.

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

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204; telephone: (503) 326–2724; Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491; Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Order No. 985 (7 CFR Part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the ''order.'' This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in

conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, that may be purchased from or handled for producers by handlers during the 2000–2001 marketing year, which begins on June 1, 2000. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

Pursuant to the authority in sections 985.50, 985.51, and 985.52 of the order, the Committee recommended the salable quantities and allotment percentages for the 2000–2001 marketing year at its October 6, 1999, meeting. With 7 members in favor and 1 member opposed, the Committee recommended the establishment of a salable quantity and allotment percentage for Class 1 (Scotch) spearmint oil of 1,211,207 pounds and 65 percent, respectively. The member in opposition favored the establishment of a lower salable quantity and allotment percentage. The Committee unanimously recommended the establishment of a salable quantity and allotment percentage for Class 3 (Native) spearmint oil of 1,033,648 pounds and 50 percent, respectively.

This proposed rule would limit the amount of spearmint oil that handlers may purchase from, or handle for, producers during the 2000–2001 marketing year, which begins on June 1, 2000. Salable quantities and allotment percentages have been placed into effect each season since the order's inception in 1980.

The U.S. production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered by the marketing order). Spearmint oil is also produced in the Midwest. The production area covered by the marketing order currently accounts for approximately 63 percent of the annual U.S. production of Scotch spearmint oil and approximately 93 percent of the annual U.S. production of Native spearmint oil.

When the order became effective in 1980, the United States produced nearly 100 percent of the world's supply of Scotch spearmint oil, of which approximately 72 percent was produced in the regulated production area in the Far West. International production characteristics have changed in recent years, however, with foreign Scotch spearmint oil production contributing significantly to world production. The Far West's market share as a percent of total world sales fell to a low of about 38 percent during the 1994–95 season. Beginning with the 1996–97 marketing year, the Committee has employed a marketing strategy for Scotch spearmint oil that is intended to foster market stability and that would retain and expand market share. Using this approach, the Far West's market share has increased to approximately 43 percent of total world sales. The Committee's current recommendation for Scotch spearmint oil could maintain market stability by avoiding extreme fluctuations in supplies and prices, and would help the industry remain competitive on an international level by hopefully regaining more of the Far West's historical share of the global market.

The order has contributed extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year to year. For example, between 1971 and 1975 the price of Native spearmint oil ranged from $3.00 per pound to $11.00 per pound. In contrast, under the order, prices have generally stabilized between $10.50 and $11.50 per pound. During the past year, however, the price of Native spearmint oil has decreased about $2.00 per pound despite the Committee's efforts to balance available supplies with the demand for the oil. Based on comments made at the Committee's meeting, factors contributing to the low price could include the relatively poor returns being realized from other essential oils, as well as the overall weak farm situation.

With approximately 90 percent of the U.S. production located in the Far West, and with nearly 80 percent of total world sales originating in the Far West, the Committee's method of calculating the Native spearmint oil salable quantity and allotment percentage continues to primarily utilize information on price and available supply as they are affected by the estimated trade demand.

The proposed salable quantity and allotment percentage for each class of spearmint oil for the 2000–2001 marketing year is based upon the Committee's recommendation and the data presented below.

(1) Class 1 (Scotch) Spearmint Oil

(A) Estimated carry-in on June l, 2000–869,206 pounds. This figure is derived by subtracting the estimated 1999–2000 marketing year trade demand of 887,500 pounds from the revised 1999–2000 marketing year total available supply of 1,756,706 pounds.

(B) Estimated global sales for the 1999–2000 marketing year—2,082,500 pounds. This figure is based on preliminary information the Committee has compiled.

(C) Estimated Far West sales for the 1999–2000 marketing year—900,000 pounds.

(D) Approximate Far West percentage of estimated total world sales in 1999–2000—43 percent. This is down from the 1980 level of approximately 72 percent, but up from the low of approximately 38 percent during the 1994/95 marketing year.

(E) Total estimated allotment base for the 2000–2001 marketing year—1,863,396 pounds. This figure represents a one percent increase over the revised 1999–2000 allotment base.

(F) Recommended 2000–2001 allotment percentage—65 percent. This figure is based upon recommendations made at the October 6, 1999, meeting, as well as at the five Scotch spearmint oil production area meetings held during September 1999.

(G) The Committee's computed 2000–2001 salable quantity—1,211,207 pounds. This figure is the product of the recommended allotment percentage and the total estimated allotment base.

(H) Estimated available supply for the 2000–2001 marketing year—2,080,413 pounds. This figure is derived by adding the computed salable quantity to the estimated June 1, 2000, carry-in volume, and represents the total amount of Scotch spearmint oil that could be available to the market during the 2000–2001 marketing year.

(I) Estimated trade demand for Far West Scotch spearmint oil during the 2000–2001 marketing year—887,500 pounds. This figure is based upon estimates provided to the Committee by buyers of spearmint oil.

(J) Estimated carry-out on May 31, 2001—1,192,913 pounds. This figure is the difference between the 2000–2001 estimated trade demand and the 2000–2001 estimated available supply.

(2) Class 3 (Native) Spearmint Oil

(A) Estimated carry-in on June 1, 2000—64,602 pounds. This figure is the difference between the estimated 1999–2000 marketing year trade demand of 1,168,474 pounds and the revised 1999–2000 marketing year total available supply of 1,233,076 pounds.

(B) Estimated trade demand (domestic and export) for the 2000–2001 marketing year—1,170,974 pounds. This figure is based on the average of the estimates provided at the four production area meetings held in September 1999.

(C) Salable quantity required from the year 2000 production—1,106,372 pounds. This figure is the difference between the estimated 2000–2001 marketing year trade demand and the estimated carry-in on June 1, 2000.

(D) Total estimated allotment base for the 2000–2001 marketing year—2,067,296 pounds. This figure represents a one percent increase over the revised 1999–2000 allotment base.

(E) Computed allotment percentage—53.5 percent. This percentage is computed by dividing the required salable quantity by the total estimated allotment base.

(F) Recommended allotment percentage—50 percent. This is the Committee's recommendation based on the computed allotment percentage and takes into account the recent sharp decline in the Native spearmint oil price.

(G) The Committee's recommended salable quantity—1,033,648 pounds. This figure is the product of the recommended allotment percentage and the total estimated allotment base.

The salable quantity is the total quantity of each class of spearmint oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The Committee's recommended Scotch spearmint oil salable quantity of 1,211,207 pounds and allotment percentage of 65 percent are based on the Committee's goal of maintaining market stability by avoiding extreme fluctuations in supplies and prices, and thereby helping the industry remain competitive on the international level. The Committee's recommended Native spearmint oil salable quantity of 1,106,372 pounds and allotment percentage of 50 percent are based on the anticipated supply and trade demand during the 2000–2001 marketing year. The proposed salable quantities are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market demand for spearmint oil which may develop during the marketing year can be satisfied by an increase in the salable quantities. Both Scotch and Native spearmint oil producers who produce more than their annual allotments during the 2000–2001 season may transfer such excess spearmint oil to a producer with spearmint oil production less than his or her annual allotment or put it into the reserve pool.

This proposed regulation, if adopted, would be similar to those which have been issued in prior seasons. Costs to producers and handlers resulting from this proposed action are expected to be offset by the benefits derived from a stable market, a greater market share, and possible improved returns. In conjunction with the issuance of this proposed rule, the Committee's marketing policy statement for the 2000–2001 marketing year has been reviewed by the Department. The Committee's marketing policy statement, a requirement whenever the Committee recommends volume regulations, fully meets the intent of section 985.50 of the order. During its discussion of potential 2000–2001 salable quantities and allotment percentages, the Committee considered: (1) the estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with the Department's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' has also been reviewed and confirmed.

The establishment of these salable quantities and allotment percentages would allow for anticipated market needs. In determining anticipated market needs, consideration by the Committee was given to historical sales, and changes and trends in production and demand. This rule also provides producers with information on the amount of spearmint oil which should be produced for next season in order to meet anticipated market demand.

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

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

There are 7 spearmint oil handlers subject to regulation under the order, and approximately 119 producers of Class 1 (Scotch) spearmint oil and approximately 105 producers of Class 3 (Native) spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA)(13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers have been defined as those whose annual receipts are less than $500,000.

Based on the SBA's definition of small entities, the Committee estimates that 2 of the 7 handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 25 of the 119 Scotch spearmint oil producers and 7 of the 105 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. A

normal spearmint oil producing operation would have enough acreage for rotation such that the total acreage required to produce the crop would be about one-third spearmint and two-thirds rotational crops. An average spearmint oil producing farm would thus have to have considerably more acreage than would be planted to spearmint during any given season. To remain economically viable with the added costs associated with spearmint oil production, most spearmint oil producing farms would fall into the SBA category of large businesses.

This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 2000–2001 marketing year. The Committee recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices, and thus help to maintain stability in the spearmint oil market. This action is authorized by the provisions of sections 985.50, 985.51 and 985.52 of the order.

Small spearmint oil producers generally are not extensively diversified and as such are more at risk to market fluctuations. Such small farmers generally need to market their entire annual crop and do not have the luxury of having other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because incomes from alternate crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit the small producer more than such provisions benefit large producers. Even though a majority of handlers and producers of spearmint oil may not be classified as small entities, the volume control feature of this order has small entity orientation.

The order has contributed extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year to year. For example, between 1971 and 1975 the price of Native spearmint oil ranged from $3.00 per pound to $11.00 per pound. In contrast, under the order, prices have generally stabilized between $10.50 and $11.50 per pound. During the past year, however, the price of Native spearmint oil has decreased about $2.00 per pound despite the Committee's efforts to balance available supplies with the demand for the oil. Based on comments made at the Committee's meeting, factors contributing to the low price could include the relatively poor returns being realized from other essential oils as well as the overall weak farm situation.

With approximately 90 percent of the U.S. production located in the Far West, and with nearly 80 percent of total world sales originating in the Far West, the Committee's method of calculating the Native spearmint oil salable quantity and allotment percentage continues to primarily utilize information on price and available supply as they are affected by the estimated trade demand.

Alternatives to the proposal included not regulating the handling of spearmint oil during the 2000–2001 marketing year, and recommending either higher or lower levels for the salable quantities and allotment percentages. The Committee reached its recommendation to establish salable quantities and allotment percentages for both classes of spearmint oil after careful consideration of all available information, including: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Based on its review, the Committee believes that the salable quantity and allotment percentage levels recommended will achieve the objectives sought.

Without any regulations in effect, the Committee believes the industry would return to the pattern of cyclical prices of prior years, as well as suffer the potentially price depressing consequence that a release of over a million pounds of spearmint oil reserves would have on the market. According to the Committee, higher or lower salable quantities and allotment percentages would not achieve the intended goals of market and price stability, with market share maintenance and growth.

Annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. Reporting and recordkeeping requirements have remained the same for each year of regulation. These requirements have been approved by the Office of Management and Budget under OMB Control No. 0581–0065. Accordingly, this action would not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers and handlers. All reports and forms associated with this program are reviewed periodically in order to avoid unnecessary and duplicative information collection by industry and public sector agencies. The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

Finally, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend and participate on all issues. Interested persons are also invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons the opportunity to respond to the proposal, including any regulatory and informational impacts of this action on small businesses. Thirty days is deemed appropriate because this rule would need to be effective as soon as possible to provide producers sufficient time prior to the beginning of the 2000–2001 marketing year to adjust their cultural and marketing plans accordingly. All written comments received within the comment period will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR Part 985 is proposed to be amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR Part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 985.219 is added to read as follows:

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

§ 985.219 Salable quantities and allotment percentages—2000–2001 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 2000, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 1,211,207 pounds and an allotment percentage of 65 percent.

(b) Class 3 (Native) oil—a salable quantity of 1,033,648 pounds and an allotment percentage of 50 percent.

Dated: December 7, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–32232 Filed 12–10–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM167; Notice No. 25–99–10–SC]

Special Conditions: Boeing Model 777 Series Airplanes; Seats With Inflatable Lapbelts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for Boeing Model 777 series airplanes. These airplanes as modified by BF Goodrich Aerospace will have novel and unusual design features associated with seats with inflatable lapbelts. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. The proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before January 27, 2000.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–114), Docket No. NM167, 1601 Lind Avenue SW., Renton, Washington 98055–4506; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM167. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, FAA, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2136; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The proposals described in this notice may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. NM167.'' The postcard will be date stamped and returned to the commenter.

Background

On March 31, 1999, BF Goodrich Aerospace, 3420 South 7th Street, Suite 1, Phoenix, Arizona 85040, applied for a supplemental type certificate to install inflatable lapbelts for head injury protection on certain seats in Boeing Model 777 series airplanes. The Model 777 series airplane is a swept-wing, conventional-tail, twin-engine, turbofan-powered transport. The inflatable lapbelt is designed to limit occupant forward excursion in the event of an accident. This will reduce the potential for head injury, thereby reducing the Head Injury Criteria (HIC) measurement. The inflatable lapbelt behaves similarly to an automotive airbag, but in this case the airbag is integrated into the lapbelt, and deploys away from the seated occupant. While airbags are now standard in the automotive industry, the use of an inflatable lapbelt is novel for commercial aviation.

Title 14 Code of Federal Regulations (14 CFR) § 25.785 requires that occupants be protected from head injury by either the elimination of any injurious object within the striking radius of the head, or by padding. Traditionally, this has required a set back of 35″ from any bulkhead or other rigid interior feature or, where not practical, specified types of padding. The relative effectiveness of these means of injury protection was not quantified. With the adoption of Amendment 25–64 to 14 CFR part 25, specifically § 25.562, a new standard that quantifies required head injury protection was created.

Title 14 CFR 25.562 specifies that dynamic tests must be conducted for each seat type installed in the airplane. In particular, the regulations require that persons not suffer serious head injury under the conditions specified in the tests, and that a HIC measurement of not more than 1000 units be recorded, should contact with the cabin interior occur. While the test conditions described in this section are specific, it is the intent of the requirement that an adequate level of head injury protection be provided for crash severity up to and including that specified.

Amendment 25–64 is part of the Model 777 certification basis. Therefore, the seat installation with inflatable lapbelts must meet the HIC requirement. The FAA will require that a HIC of less than 1000 be demonstrated for occupants of seats incorporating the inflatable lapbelt.

Because § 25.562 and associated guidance do not adequately address seats with inflatable lapbelts, the FAA recognizes that appropriate pass/fail criteria need to be developed that do fully address the safety concerns specific to occupants of these seats.

The inflatable lapbelt has two potential advantages over other means of head impact protection. First, it can provide essentially equivalent protection for occupants of all stature, and second, it can provide significantly greater protection than would be expected with energy absorbing pads, for example. These are significant advantages from a safety standpoint, since such devices will likely provide a level of safety that exceeds the minimum standards of the Federal Aviation Regulations (FAR). Conversely, airbags in general are active systems, and must be relied upon to activate properly when needed, as opposed to an energy absorbing pad or upper torso restraint that is passive, and always available. These potential advantages must be balanced against the potential problems in order to develop standards

that will provide an equivalent level of safety to that intended by the regulations.

The FAA has considered the installation of inflatable lapbelts to have two primary safety concerns: first, that they perform properly under foreseeable operating conditions, and second that they do not perform in a manner or at such times as would constitute a hazard to the airplane or occupants. This latter point has the potential to be the more rigorous of the requirements, owing to the active nature of the system. With this philosophy in mind, the FAA has considered the following as a basis for the special conditions.

The inflatable lapbelt will rely on electronic sensors for signaling and pyrotechnic charges for activation so that it is available when needed. These same devices could be susceptible to inadvertent activation, causing deployment in a potentially unsafe manner. The consequences of such deployment must be considered in establishing the reliability of the system. BF Goodrich Aerospace must substantiate that the effects of an inadvertent deployment in flight are either not a hazard to the airplane, or that such deployment is an extremely improbable occurrence (less than 10^{-9} per flight hour). The effect of an inadvertent deployment on a passenger or crewmember that might be positioned close to the airbag should also be considered. The person could be either standing or sitting. A minimum reliability level will have to be established for this case, depending upon the consequences, even if the effect on the airplane is negligible.

The potential for an inadvertent deployment could be increased as a result of conditions in service. The installation must take into account wear and tear so that the likelihood of an inadvertent deployment is not increased to an unacceptable level. In this context, an appropriate inspection interval and self-test capability are considered necessary. Other outside influences are lightning and high intensity electromagnetic fields (HIRF). Since the sensors that trigger deployment are electronic, they must be protected from the effects of these threats. Existing Special Conditions No. 25–ANM–78 regarding lightning and HIRF are therefore applicable. For the purposes of compliance with those special conditions, if inadvertent deployment could cause a hazard to the airplane, the airbag is considered a critical system; if inadvertent deployment could cause injuries to persons, the airbag should be considered an essential system. Finally, the airbag installation should be protected from the effects of fire, so that an additional hazard is not created by, for example, a rupture of the pyrotechnic squib.

In order to be an effective safety system, the airbag must function properly and must not introduce any additional hazards to occupants as a result of its functioning. There are several areas where the airbag differs from traditional occupant protection systems, and requires special conditions to ensure adequate performance.

Because the airbag is essentially a single use device, there is the potential that it could deploy under crash conditions that are not sufficiently severe as to require head injury protection from the airbag. Since an actual crash is frequently composed of a series of impacts, this could render the airbag useless if a larger impact follows the initial impact. This situation does not exist with energy absorbing pads or upper torso restraints, which tend to provide protection according to the severity of the impact. Therefore, the airbag installation should be such that the airbag will provide protection when it is required, and will not expend its protection when it is not needed. There is no requirement for the airbag to provide protection for multiple impacts, where more than one impact would require protection.

Since each occupant's restraint system provides protection for that occupant only, the installation must address seats that are unoccupied. It will be necessary to show that the required protection is provided for each occupant regardless of the number of occupied seats, and considering that unoccupied seats may have lapbelts that are active.

Since a wide range of occupants could occupy a seat, the inflatable lapbelt should be effective for a wide range of occupants. The FAA has historically considered the range from the 5th percentile female to the 95th percentile male as the range of occupants that must be taken into account. In this case, the FAA is proposing consideration of a larger range of occupants, due to the nature of the lapbelt installation and its close proximity to the occupant. In a similar vein, these persons could have assumed the brace position, for those accidents where an impact is anticipated. Test data indicate that occupants in the brace position do not require supplemental protection, and so it would not be necessary to show that the inflatable lapbelt will enhance the brace position. However, the inflatable lapbelt must not introduce a hazard in that case by deploying into the seated, braced occupant.

Another area of concern is the use of seats so equipped by children whether lap-held, in approved child safety seats, or occupying the seat directly. The installation needs to address the use of the inflatable lapbelt by children, either by demonstrating that it will function properly, or by adding appropriate limitation on usage. Another concern is if the seat is occupied by a pregnant woman.

Since the inflatable lapbelt will be electrically powered, there is the possibility that the system could fail due to a separation in the fuselage. Since this system is intended as crash/post-crash protection means, failure due to fuselage separation is not acceptable. As with emergency lighting, the system should function properly if such a separation occurs at any point in the fuselage. A separation that occurs at the location of the inflatable lapbelt would not have to be considered.

Since the inflatable lapbelt is likely to have a large volume displacement, the inflated bag could potentially impede egress of passengers. Since the bag deflates to absorb energy, it is likely that an inflatable lapbelt would be deflated at the time that persons would be trying to leave their seats. Nonetheless, it is considered appropriate to specify a time interval after which the inflatable lapbelt may not impede rapid egress. Ten seconds has been chosen as a reasonable time since this corresponds to the maximum time allowed for an exit to be openable. In actuality, it is unlikely that an exit would be prepared this quickly in an accident severe enough to warrant deployment of the inflatable lapbelt, and the inflatable lapbelt will likely deflate much quicker than ten seconds.

Type Certification Basis

Under the provisions of 14 CFR 21.101, BF Goodrich Aerospace must show that the Model 777 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. T00001SE or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. T00001SE are as follows: Amendments 25–1 through 25–82 for the Model 777–200 and Amendments 25–1 through 25–86 with exceptions for the Model 777–300. The U.S. type certification basis for the Model 777 is established in accordance with 14 CFR 21.29 and 21.17 and the type

certification application date. The U.S. type certification basis is listed in Type Certificate Data Sheet No. T00001SE.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25 as amended) do not contain adequate or appropriate safety standards for Boeing Model 777 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 777 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as appropriate, are issued in accordance with 14 CFR § 11.49 after public notice, as required by 14 CFR 11.28 and 11.29(b), and become part of the type certification basis in accordance with 14 CFR 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Model 777 series airplanes will incorporate the following novel or unusual design features: BF Goodrich is proposing to install an inflatable lapbelt on certain seats of Boeing Model 777 series airplanes, in order to reduce the potential for head injury in the event of an accident. The inflatable lapbelt works similar to an automotive airbag, except that the airbag is integrated with the lap belt of the restraint system.

The FAR states the performance criteria for head injury protection in objective terms. However, none of these criteria are adequate to address the specific issues raised concerning seats with inflatable lapbelts. The FAA has therefore determined that, in addition to the requirements of 14 CFR part 25, special conditions are needed to address requirements particular to installation of seats with inflatable lapbelts.

Accordingly, in addition to the passenger injury criteria specified in 14 CFR 25.785, these special conditions are proposed for the Boeing Model 777 series airplanes equipped with inflatable lapbelts. Other conditions may be developed, as needed, based on further FAA review and discussions with the manufacturer and civil aviation authorities.

Discussion

From the standpoint of a passenger safety system, the airbag is unique in that it is both an active and entirely autonomous device. While the automotive industry has good experience with airbags, the conditions of use and reliance on the airbag as the sole means of injury protection are quite different. In automobile installations, the airbag is a supplemental system and works in conjunction with an upper torso restraint. In addition, the crash event is more definable and of typically shorter duration, which can simplify the activation logic. The airplane-operating environment is also quite different from automobiles and includes the potential for greater wear and tear, and unanticipated abuse conditions (due to galley loading, passenger baggage, etc.); airplanes also operate where exposure to high intensity electromagnetic fields could affect the activation system.

The following proposed special conditions can be characterized as addressing either the safety performance of the system, or the system's integrity against inadvertent activation. Because a crash requiring use of the airbags is a relatively rare event, and because the consequences of an inadvertent activation are potentially quite severe, these latter requirements are probably the more rigorous from a design standpoint.

Applicability

As discussed above, these special conditions are applicable to the Model 777 series airplanes. Should BF Goodrich apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. T00001SE to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on the Boeing Model 777 series airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety, Reporting and recordkeeping requirements.

The authority citation for these proposed special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Boeing Model 777 series airplanes equipped with BF Goodrich inflatable lapbelts.

1. *Seats With Inflatable Lapbelts.* It must be shown that the inflatable lapbelt will deploy and provide protection under crash conditions where it is necessary to prevent serious head injury. The means of protection must take into consideration a range of stature from a two-year-old child to a ninety-fifth percentile male. The inflatable lapbelt must provide a consistent approach to energy absorption throughout that range. In addition, the following situations must be considered:

a. The seat occupant is holding an infant.

b. The seat occupant is a child in a child restraint device.

c. The seat occupant is a child not using a child restraint device.

d. The seat occupant is a pregnant woman.

2. The inflatable lapbelt must provide adequate protection for each occupant regardless of the number of occupants of the seat assembly, considering that unoccupied seats may have active seatbelts.

3. The design must prevent the inflatable lapbelt from being either incorrectly buckled or incorrectly installed such that the airbag would not properly deploy. Alternatively, it must be shown that such deployment is not hazardous to the occupant, and will provide the required head injury protection.

4. It must be shown that the inflatable lapbelt system is not susceptible to inadvertent deployment as a result of wear and tear, or inertial loads resulting from in-flight or ground maneuvers (including gusts and hard landings), likely to be experienced in service.

5. Deployment of the inflatable lapbelt must not introduce injury mechanisms to the seated occupant, or result in injuries that could impede rapid egress. This assessment should include an occupant who is in the brace position when it deploys and an occupant whose belt is loosely fastened.

6. It must be shown that an inadvertent deployment, that could cause injury to a standing or sitting person, is improbable.

7. It must be shown that inadvertent deployment of the inflatable lapbelt,

during the most critical part of the flight, will either not cause a hazard to the airplane or is extremely improbable.

8. It must be shown that the inflatable lapbelt will not impede rapid egress of occupants 10 seconds after its deployment.

9. The system must be protected from lightning and HIRF. The threats specified in Special Condition No. 25–ANM–78 are incorporated by reference for the purpose of measuring lightning and HIRF protection. For the purposes of complying with HIRF requirements, the inflatable lapbelt system is considered a ''critical system'' if its deployment could have a hazardous effect on the airplane; otherwise it is considered an ''essential'' system.

10. The inflatable lapbelt must function properly after loss of normal aircraft electrical power, and after a transverse separation of the fuselage at the most critical location. A separation at the location of the lapbelt does not have to be considered.

11. It must be shown that the inflatable lapbelt will not release hazardous quantities of gas or particulate matter into the cabin.

12. The inflatable lapbelt installation must be protected from the effects of fire such that no hazard to occupants will result.

13. There must be a means for a crewmember to verify the integrity of the inflatable lapbelt activation system prior to each flight or it must be demonstrated to reliably operate between inspection intervals.

Issued in Renton, Washington, on December 1, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 99–32110 Filed 12–10–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–57–AD]

RIN 2120–AA64

Airworthiness Directives; CFM International CFM56–2, –2A, 2B, –3, –3B, and –3C Series Turbofan Engines

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 CFM International CFM56–2, –2A, –2B, –3, –3B, and –3C series turbofan engines. This proposal would require a one-time eddy current inspection (ECI) for cracks in the bolt holes of high pressure turbine (HPT) front rotating air seals. This proposal is prompted by reports of machining anomalies in a bolt hole that led to an HPT front rotating air seal failure. The actions specified by the proposed AD are intended to detect cracks in the bolt holes of HPT front rotating air seals, which can lead to an uncontained engine failure and damage to the aircraft.

DATES: Comments must be received by January 12, 2000.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–57–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ane-adcomment@faa.gov''. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552–2800, fax (513) 552–2816. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: James Rosa, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7152, fax (781) 238–7199.

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 to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99NE–57–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, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–57–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) has received a report of an uncontained engine failure on a CFM International Model CFM56–3 turbofan engine. An investigation revealed a crack in a bolt hole of the high pressure turbine (HPT) front rotating air seal due to machining anomalies. The manufacturer has identified other HPT front rotating air seals by serial number (S/N) that may have the same anomalies. This condition, if not corrected, could result in cracks in the bolt holes of HPT front rotating air seals, which can lead to an uncontained engine failure and damage to the aircraft.

Service Information

The FAA has reviewed and approved the technical contents of the following CFM International Service Bulletins (SBs): CFM56–2 SB 72–869, dated November 12, 1999; CFM56–2A SB 72–470, dated November 12, 1999, CFM56–2B SB 72–611, dated November 12, 1999, and CFM56–3/3B/3C SB 72–922, dated November 12, 1999. These SBs describe the procedures for eddy current inspections (ECI) for cracks in the bolt holes of HPT front rotating air seals caused by machining anomalies. Additionally, these SBs identify by S/N the HPT front rotating air seals that may have the same anomalies.

Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a one-time ECI for cracks in the bolt holes of HPT front rotating air seals. The compliance intervals are based upon risk analysis. The actions would be required to be accomplished in accordance with the SBs described previously.

Economic Analysis

There are approximately 121 engines of the affected design in the worldwide fleet. The FAA estimates that 13 engines installed on aircraft of US registry would be affected by this proposed AD, that it would take approximately 300 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on US operators is estimated to be $234,000.

Regulatory Impact

This proposal does not have federalism implications, as defined in Executive Order No. 13132, because it would not have a substantial direct effect 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. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposal.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

CFM International: Docket No. 99–NE–57–AD.

Applicability: CFM International (CFMI) CFM56–2, –2A, –2B, –3, –3B, and –3C series turbofan engines, installed on but not limited to McDonnell Douglas DC–8 series, Boeing 737 series, as well as Boeing E–3, E–6, and KC–135 (Military) series airplanes.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent cracks in the bolt holes of high pressure turbine (HPT) front rotating air seals, which can lead to an uncontained engine failure and damage to the aircraft, accomplish the following:

One-Time Eddy Current Inspections (ECI) Based Upon Engine Model and Thrust Ratings

(a) Perform a one-time ECI for cracks in the bolt holes of HPT front rotating air seals, part number 1282M72P03, and, if necessary, replace with serviceable parts, as follows:

CFM56–3 Series

(1) For CFM56–3–B1 engine nameplate models with HPT front rotating air seals listed by serial number (S/N) in paragraph 1.A(1), Effectivity, of CFMI CFM56–3/3B/3C Service Bulletin (SB) 72–922, dated November 12, 1999, inspect in accordance with the procedures described in Paragraph 2, Accomplishment Instructions, of that SB, and in accordance with the intervals listed in paragraph (a)(4)(i) or (a)(4)(ii) of this AD, as applicable.

(2) For CFM56–3B–2 models with maximum thrust limited to 20,100 or 18,500 pounds by the FMC and aircraft flight manual AFM, with HPT front rotating air seals listed by S/N in paragraph 1.A(1), Effectivity, of CFMI CFM56–3/3B/3C SB 72–922, dated November 12, 1999, inspect in accordance with the procedures described in Paragraph 2, Accomplishment Instructions, of that SB, and in accordance with the intervals listed in paragraph (a)(4)(i) or (a)(4)(ii) of this AD, as applicable.

(3) For CFM56–3C–1 models with maximum thrust limited to 20,100 or 18,500 pounds by the FMC and AFM, , with HPT front rotating air seals listed by S/N in paragraph 1.A(1), Effectivity, of CFMI CFM56–3/3B/3C SB 72–922, dated November 12, 1999, inspect in accordance with the procedures described in Paragraph 2, Accomplishment Instructions, of that SB, and in accordance with the intervals listed in paragraph (a)(4)(i) or (a)(4)(ii), as applicable.

Compliance Times for (a)(1), (a)(2), and (a)(3)

(4) Use the following compliance times for the engine models listed in paragraphs (a)(1), (a)(2), and (a)(3) of this AD:

(i) For HPT front rotating air seals with less than 10,000 cycles since new (CSN) on the effective date of this AD, inspect at the next engine shop visit after accumulating 4,000 CSN, not to exceed 13,000 CSN.

(ii) For HPT front rotating air seals with 10,000 CSN or more on the effective date of this AD, inspect at the next engine shop visit prior to accumulating 3,000 cycles-in-service (CIS) after the effective date of this AD, or prior to accumulating 20,000 CSN, whichever occurs first.

(5) For CFM56–3B–2 engine nameplate models, with HPT front rotating air seals listed by S/N in paragraph 1.A(1), Effectivity, of CFMI CFM56–3/3B/3C SB 72–922, dated November 12, 1999, inspect in accordance with the procedures described in Paragraph 2, Accomplishment Instructions, of that SB, and in accordance with the intervals listed in paragraphs (a)(7)(i), or (a)(7)(ii) of this AD, as applicable.

(6) For CFM56–3C–1 models with maximum thrust limited to 22,100 pounds by the FMC and AFM, with HPT front rotating air seals listed by S/N in paragraph 1.A(1), Effectivity, of CFMI CFM56–3/3B/3C SB 72–922, dated November 12, 1999, inspect in accordance with the procedures described in Paragraph 2, Accomplishment Instructions, of that SB, and in accordance with the intervals listed in paragraphs (a)(7)(i), or (a)(7)(ii) of this AD, as applicable.

Compliance Times for (a)(5) and (a)(6)

(7) Use the following compliance times for the engine models listed in paragraphs (a)(5) and (a)(6) of this AD:

(i) For HPT front rotating air seals with less than 9,800 CSN on the effective date of this AD, inspect at the next engine shop visit after accumulating 4,000 CSN, not to exceed 12,800 CSN.

(ii) For HPT front rotating air seals with 9,800 CSN or more on the effective date of this AD, inspect at the next engine shop visit prior to accumulating 3,000 CIS after the effective date of this AD, or prior to accumulating 15,800 CSN, whichever occurs first.

(8) For CFM56–3C–1 engine nameplate models, with HPT front rotating air seals listed by S/N in paragraph 1.A(1), Effectivity, of CFMI CFM56–3/3B/3C SB 72–922, dated

November 12, 1999, inspect in accordance with the procedures described in Paragraph 2, Accomplishment Instructions, of that SB, as follows:

(i) For HPT front rotating air seals with less than 9,100 CSN on the effective date of this AD, inspect at the next engine shop visit after accumulating 4,000 CSN, not to exceed 12,100 CSN.

(ii) For HPT front rotating air seals with 9,100 CSN or more on the effective date of this AD, inspect at the next engine shop visit prior to accumulating 3,000 CIS after the effective date of this AD, or prior to accumulating 15,100 CSN, whichever occurs first.

Uninstalled Parts

(9) Prior to installation in CFM56–3/3B/3C series engines, inspect uninstalled parts listed by S/N in paragraph 1.A(1), Effectivity, of CFMI CFM56–3/3B/3C SB 72–922, dated November 12, 1999, in accordance with Paragraph 2, Accomplishment Instructions, of that SB.

CFM56–2 Series

(10) For CFM56–2 engine nameplate models, with HPT front rotating air seals listed by S/N in paragraph 1.A(1), Effectivity, of CFMI CFM56–2 SB 72–869, dated November 12, 1999, inspect in accordance with the procedures described in Paragraph 2, Accomplishment Instructions, of that SB, as follows:

(i) For HPT front rotating air seals with less than 9,100 CSN on the effective date of this AD, inspect at the next engine shop visit after accumulating 4,000 CSN, not to exceed 10,100 CSN.

(ii) For HPT front rotating air seals with 9,100 CSN or more on the effective date of this AD, inspect at the next engine shop visit prior to accumulating 1,000 CIS after the effective date of this AD, or prior to accumulating 13,100 CSN, whichever occurs first.

Uninstalled Parts

(11) Prior to installation in CFM56–2 series engines, inspect uninstalled parts listed by S/N in paragraph 1.A(1), Effectivity, of CFMI CFM56–2 SB 72–869, dated November 12, 1999, in accordance with Paragraph 2, Accomplishment Instructions, of that SB.

CFM56–2A Series

(12) For CFM56–2A engine nameplate models, with HPT front rotating air seals listed by S/N in paragraph 1.A(1), Effectivity, of CFM56–2A SB 72–470, dated November 12, 1999, inspect in accordance with the procedures described in Paragraph 2, Accomplishment Instructions, of that SB, after accumulating 3,000 CSN but before accumulating 6,000 CSN.

Uninstalled Parts

(13) Prior to installation in CFM56–2A series engines, inspect uninstalled parts listed by S/N in paragraph 1.A(1), Effectivity, of CFMI CFM56–2A SB 72–470, dated November 12, 1999, in accordance with the procedures described in Paragraph 2, Accomplishment Instructions, of that SB.

CFM56–2B Series

(14) For CFM56–2B engine nameplate models, with HPT front rotating air seals listed by S/N in paragraph 1.A(1), Effectivity, of CFM56–2B SB 72–611, dated November 12, 1999, inspect in accordance with the procedures described in Paragraph 2, Accomplishment Instructions, of that SB, after accumulating 3,000 CSN but before accumulating 6,000 CSN.

Uninstalled Parts

(15) Prior to installation in CFM56–2B series engines, inspect uninstalled parts listed by S/N in paragraph 1.A(1), Effectivity, of CFMI CFM56–2B SB 72–611, dated November 12, 1999, in accordance with the procedures described in Paragraph 2, Accomplishment Instructions, of that SB.

Replace Cracked Parts

(16) Prior to further flight, replace cracked HPT front rotating air seals with serviceable parts.

Definition

(b) For the purpose of this AD, an engine shop visit is defined as the next time, after the effective date of this AD, an engine is in the shop for the purpose of maintenance or inspection.

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, Engine Certification Office (ECO). Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Ferry Flights

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

Issued in Burlington, Massachusetts, on December 7, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–32194 Filed 12–10–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AAL–20]

Proposed Revision of Class E Airspace; Kipnuk, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise Class E airspace at Kipnuk, AK. The establishment of a Global Positioning System (GPS) instrument approach procedures to runway (RWY) 15 at Kipnuk Airport has made this action necessary. Adoption of this proposal would result in adequate controlled airspace for aircraft flying IFR procedures at Kipnuk, AK.

DATES: Comments must be received on or before January 27, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, AAL–530, Docket No. 99–AAL–20, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Regional Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, Operations Branch, Air Traffic Division, at the address shown above and on the Internet at Alaskan Region's homepage at http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

FOR FURTHER INFORMATION CONTACT: Bob Durand, Operations Branch, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: Bob.Durand@faa.gov. Internet address: http://www.alaska.faa.gov/at or at http://162.58.28.41/at.

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 action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 99–AAL–20.'' 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 action may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, 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 Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the **Federal Register**'s electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the **Federal Register**'s web page for access to recently published rulemaking documents at http://www.access.gpo.gov/su__docs/aces/aces140.html.

Any person may obtain a copy of this NPRM by submitting a request to the Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the individual(s) identified in the **FOR FURTHER INFORMATION CONTACT** section.

The Proposal

The FAA proposes to amend 14 CFR part 71 by revising Class E airspace at Kipnuk, AK, due to the establishment of a GPS instrument approach to RWY 15. The intended effect of this proposal is to provide additional controlled airspace for IFR operations at Kipnuk, AK.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9G, *Airspace Designations and Reporting Points,* dated September 1, 1999, and effective September 16, 1999, 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 established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) Does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, *Airspace Designations and Reporting Points,* dated September 1, 1999, and effective September 16, 1999, is amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Kipnuk, AK [Revised]

Kipnuk Airport, AK
(Lat.59°55′59″ N., long. 164°01′50″ W.)
Kipnuk VOR/DME
(Lat.59°56′34″ N., long. 164°02′04″ W.)

That airspace extending upward from 700 feet above the surface within 6.2-mile radius of the Kipnuk Airport and within 3 miles each side of the Kipnuk VOR/DME 168° radial extending from the 6.2-mile radius of the airport to 9.5 miles south of the airport and within 4 miles east and 8 miles west of the Kipnuk VOR/DME 348° radial extending from the Kipnuk VOR/DME to 16 miles north of the VOR/DME; and that airspace extending upward from 1,200 feet above the surface within a 51-mile radius of the VOR/DME.; excluding that airspace within the Norton Sound Low Offshore Airspace Area and the Bethel Class E airspace area.

* * * * *

Issued in Anchorage, AK, on December 2, 1999.

Trent S. Cummings,

Assistant Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 99–32107 Filed 12–10–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AAL–22]

Proposed Establishment of Class E Airspace; Holy Cross, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at Holy Cross, AK. The establishment of Global Positioning System (GPS) instrument approach procedures at Holy Cross Airport have made this action necessary. The Holy Cross Airport status will change from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR). Adoption of this proposal would result in adequate controlled airspace for aircraft flying IFR procedures at Holy Cross, AK.

DATES: Comments must be received on or before January 27, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, AAL–530, Docket No. 99–AAL–22, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Regional Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, Operations Branch, Air Traffic Division, at the address shown above and on the Internet at Alaskan Region's homepage at http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

FOR FURTHER INFORMATION CONTACT: Bob Durand, Operations Branch, Federal

Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: Bob.Durand@faa.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

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 action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 99–AAL–22.'' 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 action may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, 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.

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Internet users may reach the Federal Register's web page for access to recently published rulemaking documents at http://www.access.gpo.gov/su__docs/aces/aces140.html.

Any person may obtain a copy of this NPRM by submitting a request to the Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the individual(s) identified in the **FOR FURTHER INFORMATION CONTACT** section.

The Proposal

The FAA proposes to amend 14 CFR part 71 by establishing Class E airspace at Holy Cross, AK, due to the establishment of GPS instrument approach procedures to Runway 1 and Runway 19 . The intended effect of this proposal is to provide controlled airspace for IFR operations at Holy Cross, AK.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9G, *Airspace Designations and Reporting Points,* dated September 1, 1999, and effective September 16, 1999, 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 established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) Does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, *Airspace Designations and Reporting Points,* dated September 1, 1999, and effective September 16, 1999, is amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Holy Cross, AK [New]

Holy Cross Airport
(Lat. 62° 11′ 18″ N., long. 159° 46′ 30″ W.)

That airspace extending upward from 700 feet above the surface within 6.3-mile radius of the Holy Cross Airport and that airspace extending upward from 1,200 feet above the surface within a 24-mile radius of the Holy Cross Airport; excluding that airspace within the Anvik Class E airspace area.

* * * * *

Issued in Anchorage, AK, on December 2, 1999.

Trent S. Cummings,

Assistant Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 99–32106 Filed 12–10–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

31 CFR Part 28

Federal Benefit Payments Under Certain District of Columbia Retirement Plans

AGENCY: Department of the Treasury, Departmental Offices.

ACTION: Proposed rule.

SUMMARY: The Department of the Treasury, Departmental Offices, is issuing proposed regulations to implement the provisions of the Balanced Budget Act of 1997, as amended (Act). The Act assigns the

Secretary of the Treasury responsibility for payment of benefits under the District of Columbia (District) retirement plans for police and firefighters, and teachers for benefits based on credit for service accrued as of June 30, 1997, and under the District retirement plan for judges. The proposed regulations would establish the general rules for the Department of the Treasury's administration of its program responsibilities and the methodology for determining the amount of Federal Benefit Payments.

DATES: Comments must be received on or before February 11, 2000.

ADDRESSES: Send comments to Ronald A. Glaser, Director, Office of Personnel Policy, Department of the Treasury, Annex Building, Room 4161, Pennsylvania Avenue and Madison Place, NW, Washington, DC 20220. Comments may also be submitted by electronic mail to dcpensions@do.treas.gov.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 622–1540, Department of the Treasury, Annex Building, Room 4005, Pennsylvania Avenue and Madison Place, NW, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: Title XI of the Balanced Budget Act of 1997, Pub. L. 105–33, 111 Stat. 251, 712–731, 756–759, enacted August 5, 1997, as amended by the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999, Pub. L. 105–277, 112 Stat. 2681, 2681–530 through 538, 2681–552, transferred certain unfunded pension liabilities from the District of Columbia government to the Federal Government. The Act requires the Federal Government to assume responsibility for payment of certain benefits that accrued on or before June 30, 1997, under the retirement plans for District of Columbia teachers (Teachers Plan), police and firefighters (Police and Firefighters Plan), and for past and future benefits under the retirement plan for judges (Judges Plan). The Act also required the District of Columbia government to establish replacement retirement plans that will provide retirement benefits for service after June 30, 1997, for current and future teachers, police, and firefighters.

1. Federal Government's Responsibilities

The Department of the Treasury has determined that its function, with respect to the payment of benefits under District retirement plans, is to calculate and fund the gross amount of Federal Benefit Payments. The Department will not allocate amounts attributable to withholdings and disbursements from individual gross benefit amounts for Federal and other taxes, health and life insurance premiums and other purposes between the Federal Benefit Payment and amounts payable under a District replacement plan. The Department will provide oversight of continuing deductions to assure proper withholdings and disbursements. It will not compute a gross-to-net spread for each Federal Benefit Payment. To do otherwise would produce an accounting anomaly that is inefficient and expensive.

Approximately 13,000 people were on the annuity rolls of the Police and Firefighters Plan and the Teachers Plan at the time the Department of the Treasury assumed liability for payments under these plans (June 30, 1997). In each of these cases, the total annuity payable is a Federal Benefit Payment. Subsequent retirements (*i.e.,* during the interim administration period under section 11041 of the Balanced Budget Act of 1997, as amended) have to date produced about 1300 additional cases for which nearly all of each total benefit will be a Federal Benefit Payment.

The Department of the Treasury does not plan to review the accuracy of the annuity computation made initially by the District of Columbia in each of the initial 13,000 cases for which the entire benefit is a Federal Benefit Payment. If the Department examines any of the cases because of a future event, such as an administrative or other review, and in that examination discovers an error, it will take appropriate steps to correct the error. Procedures for such correction will be established in a later issuance, as will procedures for collection and waiver of overpayments. In each of the cases in which the employee retired after June 30, 1997, the Department has determined that it must determine the amount of Federal Benefit Payments.

2. Proposed Regulations

The Department of the Treasury is issuing proposed regulations necessary for the administration of Federal Benefit Payments under the Balanced Budget of 1997, as amended. The Department plans future issuances relating to specific aspects of the program, such as financial management issues. Subpart A contains provisions that are applicable throughout the regulations.

Section 28.102 provides information on related regulations affecting recipients' Federal Benefit Payments. This is a reference tool for readers. Paragraph (a) lists the subparts that make up this part to help readers narrow their search for specific information. Paragraphs (b) through (e) provide cross references to the regulations applicable to related programs not administered by the Department of the Treasury.

Section 28.103 defines terms for use throughout the part. This establishes uniform definitions for frequently used terms that will appear in multiple subparts.

Section 28.104 establishes a uniform payment schedule for Federal Benefit Payments. Federal Benefit Payments are payable on the first business day of the month after they accrue. This rule is statutory for the Police and Firefighters Plan under section 4–629(a) of the D.C. Code (1997). It is consistent with current practice of the Teachers Plan and the Judges Plan. It also conforms to the statutory rule established for other Federal retirement plans, such as the Civil Service Retirement System under section 8345(a) of title 5, United States Code, and the Federal Employees Retirement System under section 8463 of title 5, United States Code.

Section 28.105 establishes general rules for computing periods of time throughout the part. Paragraph (a) establishes the rule applicable to filing documents. We have adopted the regulatory language for filings under the Civil Service Retirement System under section 831.107 of Title 5, Code of Federal Regulations, and the Federal Employees Retirement System under section 841.109 of Title 5, Code of Federal Regulations.

Paragraph (b) establishes the methodology for computing benefit accruals. The methodology is adopted from section 831.701(f) of Title 5, Code of Federal Regulations, applicable to the Civil Service Retirement System, and is consistent with the past practices of the Plans.

Paragraph (c) establishes the methodology for counting the amount of service credit attributable to unused sick leave creditable in retirement computations under the Police and Firefighters Plan and the Teachers Plan. Since firefighters work a 42-hour workweek, their sick leave usage is based on a non-8-hour schedule. *See* examples 2 and 3B in appendix A to subpart C of the proposed regulations. Judges are not under a formal leave system and do not receive sick leave credit. Current practice under each plan is continued.

Paragraph (d) states the statutory rules for the amount of leave without pay that is creditable toward retirement. Up to 6 months credit is permitted in a year in each plan, but the plans differ in the measurement of a year. The Police and Firefighters Plan uses calendar years,

but the Teachers Plan uses fiscal years. Paragraph (d)(2)(ii) addresses a one-time problem created when the starting date of the fiscal years was changed in 1976 from July 1 to October 1.

Section 28.106 authorizes payment of Federal Benefit Payments to representative payees to the same extent that the District government had been authorized to make similar payments under each plan. For example, section 4–629(b) of the D.C. Code (1997) authorizes such payments for benefits under the Police and Firefighters Plan for benefit ''due a minor, or an individual mentally incompetent or other legal disability.'' The regulation is intended to clarify that the representative payee rules and procedures under each plan are not changed as a result of the benefit changing from a District payment to a Federal Benefit Payment.

At this time, the Department of the Treasury is proposing to issue subpart B solely to designate the District government's agent for receipt of legal process (court and administrative documents that may affect payments) as the Department's agent for receipt of legal process affecting Federal Benefit Payments in three specific situations. For service of garnishment orders for alimony or child support under part 581 of Title 5, Code of Federal Regulations, legal process affecting Federal Benefit Payments under these regulations should be served on the agent listed in appendix A to part 581 for the District of Columbia, not the agent for the Department of the Treasury, Departmental Offices. For service of domestic relations orders or similar court orders that award a portion of Federal Benefit Payments under these regulations (including survivor annuity awards), service should be made upon the District government's agent for the appropriate plan. Documents served must include any documentation required by the plan. Similarly, to request a representative payee for Federal Benefit Payments of payees who are incompetent or under a legal disability, application or legal process should be served upon the District government's agent for the Judges Plan, the Police and Firefighters Plan, or the Teachers Plan, as appropriate. In all other situations, that is, litigation arising under Title XI, subtitle A, chapter 8 of the Balanced Budget Act, as amended, service of process affecting Federal Benefit Payments must be made upon the United States and the Department of the Treasury in the usual manner for litigation originating in the United States District Court for the District of Columbia.

The Department of the Treasury is proposing to issue subpart C to address the issues arising under section 11012(a) and (b) of the Balanced Budget Act of 1997, as amended, under which each Federal Benefit Payment will be ''in such amount and under such terms and conditions as may apply under [the retirement program applicable to the employee on June 29, 1997],'' but without credit for service performed after June 30, 1997. The statute creates a situation in which some retirees under the Police and Firefighters Retirement Plan and the Teachers Retirement Plan will receive Federal Benefit Payments as a portion of their total retirement benefit as well as additional payments from the District of Columbia for their service after June 30, 1997. Benefits partially paid by the Department of the Treasury and partially paid by the District of Columbia are designated as ''split benefits.'' Subpart C describes how the Department of the Treasury determines Federal Benefit Payments, that is, the proportionate share of liability that the law requires the Federal Government to assume in order to defray costs for an individual benefit.

Subpart C also covers the Federal payment for disability benefits and for certain death benefits as provided under section 11012(c) and (d) of the Act and certain other special service credit situations not addressed in the Act. These special situations include: Federal Benefit Payments for early voluntary retirement; credit for sick leave; military service; service for which a deposit or redeposit must be paid in order for the service to be creditable under the provisions of the retirement plan; the method for applying cost-of-living adjustments to Federal Benefit Payments; and the method for applying reductions for survivor benefits to Federal Benefit Payments.

To these ends, the proposed regulations establish three general principles that are applied to determine the amount of service creditable for Federal Benefit Payments. These general rules are stated in sections 28.311 through 28.313 of the proposed regulations. The remainder of subpart C illustrates the application of the general principles to a variety of issues that affect the computation of Federal Benefit Payments.

Principle 1 addresses service performed after June 30, 1997. Such service is never credited toward Federal Benefit Payments. As a general rule, the amount of Federal Benefit Payments is computed based on retirement eligibility and average pay as of the separation date, and service creditable as of June 30, 1997. This follows directly from section 11012(a) and (b) of the Balanced Budget Act of 1997, as amended. Section 11012 (a) defines a ''Federal Benefit Payment'' as ''any benefit payment to which an individual is entitled under a District Retirement Plan in such amount and under such terms and conditions as may apply under the Program.'' In general, the Balanced Budget Act, as amended, assigns the Federal Government responsibility for paying the proportionate amount of a total benefit that is based on service accrued through the freeze date, which the law states is June 30, 1997. Further, section 11012 (b) expressly excludes service after the freeze date for purposes of determining Federal Benefit Payments. Accordingly, the Federal Government is responsible for paying benefits based on both the service credit earned up to and including the freeze date, and average pay provisions of the plans, and is not authorized to pay for service that is credited after June 30, 1997.

This general principle must be applied to individual service histories in order to determine the amount of Federal Benefit Payments. If a participant's total entitlement is based on service credited prior to July 1, 1997, the total benefit payment for that individual is the responsibility of the Federal Government. If a participant's entitlement is based on service through the June 30, 1997, freeze date and later, only that portion of the benefit that is calculated using service credited through June 30, 1997, will be paid by the Federal Government. In the case of a participant whose total benefit is based on service that is credited after June 30, 1997, no amount of the benefit is payable by the Federal Government.

In addition, length of service for a Federal Benefit Payment is calculated using whole 30-day months and dropping odd days as provided in section 28.105(b) of these regulations. This has been a standard practice in annuity calculations performed by the District of Columbia government. The Department of the Treasury proposes to continue that practice in the computation of Federal Benefit Payments.

Principle 2 addresses how the Department of the Treasury determines whether any particular period of service is creditable as of June 30, 1997. Service is counted toward Federal Benefit Payments (that is, as occurring as of June 30, 1997) only if all requirements for the service to be creditable are satisfied as of June 30, 1997. In determining whether service occurred after June 30, 1997, and thus is excluded from the computation of Federal Benefit

Payments, the controlling factor is whether all requirements for the service to be creditable were satisfied as of June 30, 1997. If any requirement was not satisfied as of June 30, 1997, the service is not used in the computation of the employee's Federal Benefit Payment. Service does not become creditable service until all of the statutory requirements for it to become creditable are satisfied. This principle resolves several questionable situations in a manner consistent with the Memorandums of Understanding Concerning Interim Administration of Retirement Programs dated September 29, 1997, and April 2, 1999, between the Department of the Treasury and the District of Columbia.

Section 28.332 of these proposed regulations addresses application of this principle to determine the extent that credit for sick leave may be allowed in computing Federal Benefit Payments. Unused sick leave is not creditable for any retirement purpose until the employee separates from service. Consequently, though sick leave may have been accrued prior to the freeze date, unless the participant also separated prior to that date, the accrued sick leave cannot be included in a Federal Benefit Payment. Thus, in cases of retirements through June 30, 1997, creditable sick leave is calculated in Federal Benefit Payments. However, for retirements after June 30, 1997, sick leave will not be included in Federal Benefit Payments, even though a portion of it may have been earned before that date.

Section 28.333 of these proposed regulations addresses application of this principle to determine the extent that credit for military service may be allowed in computing Federal Benefit Payments. Prior military service generally becomes creditable at the time of entry on duty in a covered position. Accordingly, for persons whose entry on duty occurred prior to June 30, 1997, and whose military service was performed prior to that date, credit for military service is included in Federal Benefit Payments. For persons whose entry on duty occurs after June 30, 1997, military service is not creditable toward Federal Benefit Payments, even if performed before June 30, 1997. Finally, for persons whose entry on duty occurred prior to June 30, 1997, but whose military service is performed after that date, credit for the military service is not included in Federal Benefit Payments.

Section 28.334 of these proposed regulations addresses application of this principle to determine the extent that credit for deposit and refunded service may be allowed in computing Federal Benefit Payments. Under the retirement plans, in order to receive credit at the time of retirement, a period of service for which no contributions were paid (deposit service) or a period of service for which contributions were paid, but later refunded, must be fully paid or repaid, with interest. Consequently, Federal Benefit Payments will include credit for any period of deposit or refunded service performed and paid (or repaid), and thus credited, as of June 30, 1997. However, no Federal Benefit Payment will be made for a period of deposit or refunded service that is not paid as of June 30, 1997, even though it may have been performed as of that date.

Service paid by installment payments is not creditable under the plans until the full amount of interest and principal has been paid. Thus, service paid by installment payments is not considered to be creditable for purposes of Federal Benefit Payments until the entire amount of principal and interest has been paid. Accordingly, if payment in a series of installments has not been completed as of the freeze date, no Federal Benefit Payment may be paid for the service, even though it may have been performed before the freeze date.

Paragraph (b) implements the requirement under section 4–607(15) of the D.C. Code (1997) that ''governmental service'' for the Police and Firefighter Plan includes only United States Government and certain other service ''for which retirement deductions, other than social security deductions, were made.'' This provision does not preclude credit for periods of service that should have been subject to retirement deductions, but for which due to agency error deductions were not withheld. If the service is in a position covered by the Civil Service Retirement System, the Federal Employees Retirement System, or another contributory retirement system (other than social security) for employees of the United States Government, Gallaudet College or the municipal government of the District of Columbia, the service may be credited as governmental service. However, service that is excluded from coverage under such systems, such as service under a temporary appointment, which is excluded from coverage under Civil Service Retirement System or the Federal Employees Retirement System, does not qualify as governmental service upon payment of a deposit.

Principle 3 provides that the separation date is controlling for issues other than the amount of service credit allowable, such as commencing date of Federal Benefit Payments based on eligibility for immediate or deferred annuity and the average salary to be used in the computation. The proposed regulations at sections 28.341 and following provide the methodology for computing the amount of Federal Benefit Payments based on retirement eligibility as of the separation date and service creditable as of June 30, 1997.

Section 28.341 states the general rule for the calculation of Federal Benefit Payments. Two special statutory exceptions apply. One exception is disability retirements after June 30, 1997, as discussed, *infra*, in connection with section 28.342. The other exception is for certain death benefits based on deaths after June 30, 1997. The statutory rule for these benefits is discussed, *infra,* in connection with section 28.343. In all other cases in which some service becomes creditable on or before June 30, 1997, and some service becomes creditable after June 30, 1997, Federal Benefit Payments are computed under the rules of the applicable plan as though: (1) The employee were eligible to retire as of June 30, 1997, under the same conditions as the actual retirement (that is, using the annuity computation formula that applies under the plan in effect on June 29, 1997, and the actual retirement age, including any applicable age reduction, based on the age at actual retirement); (2) The service that became creditable after June 30, 1997, did not exist; and (3) The average salary is the average salary at separation.

Section 28.342 states the special rule applicable to the computation of Federal Benefit Payments if the employee retires for disability. Section 11012(c) of the Balanced Budget Act of 1997, as amended, mandates a special rule for benefits paid as the result of a determination of disability made after the freeze date. In such cases, the law provides that Federal Benefit Payments are in the amount equal to the deferred retirement benefit, or the optional retirement benefit the individual would receive if he or she left service on the day before commencement of the disability retirement. When an individual is eligible for optional retirement at the time of separation, Federal Benefit Payments are payable immediately and are calculated based on the general rule discussed above. That is, Federal Benefit Payments consist of the service credited under the plan rules as of June 30, 1997, and average pay at the time of separation on retirement. However, if the individual is not eligible for optional retirement at the time of separation for disability retirement, Federal Benefit Payments

become payable only when the individual reaches the age at which he or she would be eligible for a deferred benefit. Then, Federal Benefit Payments are calculated as if the individual retired on a deferred annuity, with service credited through June 30, 1997, and the average pay at the time of separation for retirement.

Section 28.343 states the special rule applicable to computing Federal Benefit Payments for certain death benefits. Section 11012(d) of the Balanced Budget Act, as amended, contains a special rule regarding death benefits for survivors, when the benefits are not paid based on length of service. The special rule provides a formula for computing Federal Benefit Payments as a *pro rata* amount of the total benefits. In such cases, Federal Benefit Payments are equal to the number of months of the employees' (or former employees') service through the freeze date, divided by the total number of months of service. To determine the dollar amount of the Federal Benefit Payment in any case, multiply the fraction described in the previous sentence by the total benefit to which the survivor is entitled. This proration formula applies to lump-sum benefits as well as survivor annuities based on a guaranteed minimum rate or a base designated at retirement.

Section 28.344 establishes that cost-of-living increases are applied directly to Federal Benefit Payments, rather than computed on the total benefit and then prorated. Example 14 in appendix A to subpart C illustrates this calculation.

Section 28.345 establishes the methodology for applying reductions to provide survivor annuities to Federal Benefit Payments. If a retiree designates a base for a survivor annuity that is greater than or equal to the unreduced Federal Benefit Payment, the applicable plan's annuity reduction formula is applied to the unreduced Federal Benefit Payment to determine the reduced Federal Benefit Payment. This is illustrated in example 10 in appendix A to subpart C.

The only practical alternative to the proposed approach in sections 28.344 and 28.345 would be to calculate the total benefit and then prorate it. However, proration is not an acceptable option. The examples formulated during the drafting of the statute clearly show that independent application of each plan's benefits calculation formula as of June 30, 1997, rather than proration, was intended.

The examples in appendix A to subpart C illustrate the methodology application in a few additional situations that are not separately addressed in the regulatory text. In each of these situations the three general principles control the outcome.

Example 11 illustrates the special Federal Benefit Payments calculation when an individual retires early based on an involuntary separation from service, or retires early based an administrative decision by the District of Columbia to permit early retirement. In the case of an involuntary separation as the result of which an individual would be eligible for benefit payments under his or her retirement plan, Federal Benefit Payments are calculated as if the individual had retired on optional retirement on the date of separation. However, when an individual retires early based on an administrative decision by the District of Columbia to permit early voluntary retirement, no Federal Benefit Payments are payable until the individual reaches eligibility for a deferred benefit. Thus, an early voluntary retirement is treated similarly to a disability retirement that occurs prior to eligibility for regular optional retirement because the District's administrative determination creates eligibility for a voluntary retirement.

Both situations also are treated differently with respect to reduction of benefits for age. In cases of involuntary retirement, the age reduction formula prescribed by the retirement plan (if applicable) is applied to Federal Benefit Payments. However, in cases of early voluntary retirement, no age reduction is applied to Federal Benefit Payments because they are calculated under the plans' deferred benefit provisions.

E.O. 12866, Regulatory Review

Because this proposed rule is not a significant regulatory action for purposes E.O. 12866 a regulatory assessment is not required.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation will only affect the determination of the Federal portion of retirement benefits to certain former employees of the District of Columbia. Accordingly, a regulatory flexibility analysis is not required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 31 CFR Part 28

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

Department of the Treasury.

Nancy Killefer,

Assistant Secretary of the Treasury.

Accordingly, the Department of the Treasury, is amending Title 31 of the Code of Federal Regulations to add part 28 to read as follows:

PART 28—FEDERAL BENEFIT PAYMENTS UNDER CERTAIN DISTRICT RETIREMENT PROGRAMS

Subpart A—General Provisions

Sec.

28.101 Purpose and scope.
28.102 Related regulations.
28.103 Definitions.
28.104 Schedule for Federal Benefit Payments.
28.105 Computation of time.
28.106 Representative payees.

Subpart B—Coordination With the District Government

28.201 Purpose and scope.
28.202 Definitions. [Reserved]
28.203 Service of Process.

Subpart C—Split Benefits

28.301 Purpose and scope.
28.302 Definitions.

General Principles for Determining Service Credit To Calculate Federal Benefit Payments

28.311 Credit only for service performed on or before June 30, 1997.
28.312 All requirements for credit must be satisfied by June 30, 1997.
28.313 Federal Benefit Payments are computed based on retirement eligibility as of the separation date and service creditable as of June 30, 1997.

Service Performed After June 30, 1997

28.321 General principle.
28.322 Disability benefits.

All Requirements for Credit Must Be Satisfied by June 30, 1997

28.331 General principle.
28.332 Unused sick leave.
28.333 Military service.
28.334 Deposit service.
28.335 Refunded service.

Calculation of the Amount of Federal Benefit Payments

28.341 General principle.
28.342 Computed annuity exceeds the statutory maximum.
28.343 Disability benefits.
28.344 Survivor benefits.
28.345 Cost-of-living adjustments.
28.346 Reduction for survivor benefits.

Appendix A to Subpart C—Examples

Authority: Sections 11083 and 11251(a) of Pub. L. 105–33, 111 Stat. 730 and 756, as amended by Pub. L. 105–277, 112 Stat. 2681–530 through 538.

Subpart A—General Provisions

§ 28.101 Purpose and scope.

(a) This part contains the Department's regulations implementing Title XI of the Balanced Budget Act of 1997, Pub. L. 105–33, 111 Stat. 251, enacted August 5, 1997, as amended.

(b) This subpart contains general information to assist in the use of this part including—

(1) Information about related regulations,

(2) Definitions of terms used in more than one subpart of this part, and

(3) The Department's general rules and procedures, which usually apply to all three plans, that concern to the general administration of Federal Benefit Payments (other than claims processing, debt collection, and financial management).

(c) This part applies to all Federal Benefit Payments made on or after October 1, 1997.

§ 28.102 Related regulations.

(a) This part contains the following subparts:

(1) General Provisions (Subpart A);

(2) Coordination With the District Government (Subpart B); and

(3) Split Benefits (Subpart C).

(b) Part 581 of Title 5, Code of Federal Regulations, contains information about garnishment of certain Federal payments to enforce awards of alimony or child support.

(c) Part 831 of Title 5, Code of Federal Regulations, contains information about benefits under the Civil Service Retirement System.

(d) Part 870 of Title 5, Code of Federal Regulations, contains information about benefits under the Federal Employees Group Life Insurance Program.

(e) Part 890 of Title 5, Code of Federal Regulations, contains information about benefits under the Federal Employees Health Benefits Program.

§ 28.103 Definitions.

(a) In this part—

District government means the government of the District of Columbia.

Department means the United States Department of the Treasury.

Federal Benefit Payment means a payment for which the Department is responsible under Title XI of the Balanced Budget Act of 1997 (Pub. L. 105–33, 111 Stat. 251), as amended, to which an individual is entitled under the Judges Plan, Police and Firefighters Plan, or the Teachers Plan, in such amount and under such terms and conditions as may apply under such plan.

Judges Plan means the retirement program (under subchapter III of chapter 15 of title 11 of the D.C. Code) for judges of the District of Columbia Court of Appeals or Superior Court or with prior judicial service with the former Juvenile Court of the District of Columbia, District of Columbia Tax Court, police court, municipal court, Municipal Court of Appeals, or District of Columbia Court of General Sessions.

OPM means the United States Office of Personnel Management.

Police and Firefighters Plan means any of the retirement programs (under chapter 6 of title 4 of the D.C. Code) for members of the Metropolitan Police Force and Fire Department in effect on June 29, 1997.

Secretary means the Secretary of the United States Department of the Treasury or his or her designee.

Teachers Plan means any of the retirement programs for teachers (under chapter 12 of title 31 of the D.C. Code) in effect on June 29, 1997.

(b) In this subpart—

Legal process means—

(1) Any document that qualifies as legal process as defined in § 581.103 of Title 5, Code of Federal Regulations, or

(2) Any court order that Federal or District of Columbia law permits to cause all or any portion of a payment under the Judges Plan, the Police and Firefighters Plan, or the Teachers Plan to be made to a former spouse under chapter 30 of title 1 of the D.C. Code (1997).

Representative payee means a fiduciary to whom a payment under the Judges Plan, the Police and Firefighters Plan, or the Teachers Plan is made for the benefit of a plan participant or a survivor.

§ 28.104 Schedule for Federal Benefit Payments.

Federal Benefit Payments are payable on the first business day of the month following the month in which the benefit accrues. (*See* § 28.105(b).)

§ 28.105 Computation of time.

(a) *For filing documents.* In computing the number of days allowed for filing a document, the first day counted is the day after the action or event from which the period begins to run. If the date that ordinarily would be the last day for filing falls on a Saturday, a Sunday or a Federal holiday, the period runs until the end of the next day that is not a Saturday, a Sunday or a Federal holiday.

(b) *For benefit accrual.* (1) Annuity accrues on a daily basis; one-thirtieth of the monthly rate constitutes the daily rate.

(2) Annuity does not accrue on the 31st day of any month except that annuity accrues on the 31st day of the initial month if the employee's annuity commences on the 31st day of a 31-day month.

(3) For accrual purposes the last day of a 28-day month counts as 3 days and the last day of a 29-day month counts as 2 days.

(c) *For counting unused sick leave.* (1) For annuity computation purposes, the service of a participant under the Police and Firefighters Plan or the Teachers Plan who retires on an immediate annuity or dies leaving a survivor entitled to an annuity is increased by the number of days of unused sick leave to the participant's credit under a formal leave system.

(2) In general, 8 hours of unused sick leave increases total service by 1 day. In cases where more or less than 8 hours of sick leave would be charged for a day's absence, total service is increased by the number of days in the period between the date of separation and the date that the unused sick leave would have expired had the employee used it (except that holidays falling within the period are treated as work days, and no additional leave credit is earned for that period).

(3) If an employee's tour of duty changes from part time to full time or full time to part time within 180 days before retirement, the credit for unused sick leave is computed as though no change had occurred.

(d) *For counting leave without pay (LWOP) that is creditable service.* (1) Under the Police and Firefighters Plan, credit is allowed for no more than 6 months of LWOP in each calendar year.

(2)(i) Under the Teachers Plan credit is allowed for no more than 6 months of LWOP in each fiscal year.

(ii)(A) For years prior to fiscal year 1976, each fiscal year started on July 1 and ended on the following June 30.

(B) Fiscal year 1976 started on July 1, 1975 and ended on September 30, 1976.

(C) For years starting in fiscal year 1977, each fiscal year starts on October 1 and ends on the following September 30.

§ 28.106 Representative payees.

For Federal Benefit Payments, representative payees will be authorized to the same extent and under the same circumstances as each plan permits for non-Federal Benefit Payments under the plan. (*See e.g.,* section 4–629(b) of the D.C. Code (1997).)

Subpart B—Coordination With the District Government

§ 28.201 Purpose and scope.

This subpart contains information concerning the relationship between the

Department and the District government in the administration of Title XI of the Balanced Budget Act of 1997, as amended, and the functions of each in the administration of that Act.

§ 28.202 Definitions. [Reserved]

§ 28.203 Service of Process.

To affect Federal Benefits Payments—

(a) Service of legal process under part 581 of Title 5, Code of Federal Regulations, must be made upon the District Government under appendix A to part 581 of Title 5, Code of Federal Regulations.

(b) Any qualifying court order under chapter 30 of title 1 of the D.C. Code (1997) must be served on the District Government in accordance with the rules of the plan.

(c) Any request for or notice of appointment of a custodian, guardian, or other fiduciary to receive Federal Benefits Payments as representative payees under § 28.106 must be served on the District government in accordance with the rules of the plan.

Subpart C—Split Benefits

§ 28.301 Purpose and scope.

(a) The purpose of this subpart is to address the policy issues that affect the calculation of the Federal and District of Columbia portions of benefits under subtitle A of Title XI of the Balanced Budget Act of 1977, Pub. L. 105–33, 111 Stat. 251, 712–731, enacted August 5, 1997, as amended.

(1) This subpart states general principles for the calculation of Federal Benefit Payments in cases in which the Department and the District government are both responsible for paying a portion of the employees' total retirement benefits under the Police and Firefighters Plan or the Teachers Plan.

(2) This subpart provides illustrative examples of sample computations to show the application of the general principles to specific problems.

(b)(1) This subpart applies only to benefits under the Police and Firefighters Plan or the Teachers Plan for individuals who have performed service creditable under these programs prior to July 1, 1997.

(2) This subpart addresses only those issues that affect the split of fiscal responsibility for retirement benefits (that is, the calculation of Federal Benefit Payments).

(3) Issues relating to determination and review of eligibility and payments, and financial management, are beyond the scope of this subpart.

§ 28.302 Definitions.

In this subpart (including appendix A)—

Deferred retirement means retirement under section 4–623 of the D.C. Code (1997) (under the Police and Firefighters Plan) or section 31–1231(a) of the D.C. Code (1997) (under the Teachers Plan).

Deferred retirement age means the age at which a deferred annuity begins to accrue, that is, age 55 under the Police and Firefighters Plan and age 62 under the Teachers Plan.

Department service or *departmental service* means any period of employment in a position covered by the Police and Firefighters Plan or Teachers Plan. *Department service* or *departmental service* may include certain periods of military service that interrupt a period of employment under the Police and Firefighters Plan or the Teachers Plan.

Disability retirement means retirement under section 4–615 or section 4–616 of the D.C. Code (1997) (under the Police and Firefighters Plan) or section 31–1204 of the D.C. Code (1997) (under the Teachers Plan), regardless of whether the disability was incurred in the line of duty.

Enter on duty means commencement of employment in a position covered by the Police and Firefighters Plan or the Teachers Plan.

Excess leave without pay or *excess LWOP* means periods of time in a non-pay status that in any year is greater than the amount creditable as service under § 28.105(d).

Hire date means the date the employee entered on duty.

Military service means—

(a) For the Police and Firefighters Plan, military service as defined in section 4–607 of the D.C. Code (1997) that is creditable as other service under section 4–602 or section 4–610 of the D.C. Code (1997); and

(b) For the Teachers Plan, military service as described in section 31–1230(a)(4) of the D.C. Code (1997) for which any required deposit has been paid as of June 30, 1997.

Optional retirement means regular longevity retirement under section 4–618 of the D.C. Code (1997) (under the Police and Firefighters Plan) or section 31–1224(a) of the D.C. Code (1997) (under the Teachers Plan).

Other service means any period of creditable service other than departmental service or unused sick leave. *Other service* includes service that becomes creditable upon payment of a deposit, such as service in another school system under the Teachers Plan (under 31–1208 of the D.C. Code (1997)); and service that is creditable without payment of a deposit, such as military service occurring prior to employment under the Police and Firefighters Plan.

Pre-80 hire means an individual whose annuity is computed using the formula under the Police and Firefighters Plan applicable to individuals hired before February 15, 1980.

Pre-96 hire means an individual whose annuity is computed using the formula under the Teachers Plan applicable to individuals hired before November 10, 1996.

Sick leave means unused sick leave, which is creditable in a retirement computation, as calculated under § 28.105(c).

General Principles for Determining Service Credit To Calculate Federal Benefit Payments

§ 28.311 Credit only for service performed on or before June 30, 1997.

Only service performed on or before June 30, 1997, is credited toward Federal Benefit Payments.

§ 28.312 All requirements for credit must be satisfied by June 30, 1997.

Service is counted toward Federal Benefit Payments only if all requirements for the service to be creditable are satisfied as of June 30, 1997.

§ 28.313 Federal Benefit Payments are computed based on retirement eligibility as of the separation date and service creditable as of June 30, 1997.

Except as otherwise provided in this subpart, the amount of Federal Benefit Payments is computed based on retirement eligibility as of the separation date and service creditable as of June 30, 1997.

Service Performed After June 30, 1997

§ 28.321 General principle.

Any service performed after June 30, 1997, may never be credited toward Federal Benefit Payments.

§ 28.322 Disability benefits.

If an employee separates for disability retirement after June 30, 1997, and, on the date of separation, the employee—

(a) Satisfies the age and service requirements for optional retirement, the Federal Benefit Payment commences immediately. The Federal Benefit Payment is calculated as though the employee retired under optional retirement rules using only service through June 30, 1997. (*See* examples 7A and 7B of appendix A of this subpart).

(b) Does not satisfy the age and service requirements for optional

retirement, the Federal Benefit Payment begins when the disability retiree reaches deferred retirement age. (*See* § 28.342.)

All Requirements for Credit Must Be Satisfied by June 30, 1997

§ 28.331 General principle.

To determine whether service is creditable for the computation of Federal Benefit Payments under this subpart, the controlling factor is whether all requirements for the service to be creditable under the Police and Firefighters Plan or the Teachers Plan were satisfied as of June 30, 1997.

§ 28.332 Unused sick leave.

(a) For employees separated for retirement as of June 30, 1997, Federal Benefit Payments include credit for any unused sick leave that is creditable under the applicable plan.

(b) For employees separated for retirement after June 30, 1997, no unused sick leave is creditable toward Federal Benefit Payments.

§ 28.333 Military service.

(a) For employees who entered on duty on or before June 30, 1997, and whose military service was performed prior to that date, credit for military service is included in Federal Benefit Payments under the terms and conditions applicable to each plan.

(b) For employees who enter on duty after June 30, 1997, military service is not creditable toward Federal Benefit Payments, even if performed as of June 30, 1997.

(c) For employees who entered on duty on or before June 30, 1997, but who perform military service after that date, the credit for military service is not included in Federal Benefit Payments.

§ 28.334 Deposit service.

(a) *Teachers Plan.* (1) Periods of civilian service that were not subject to retirement deductions at the time they were performed are creditable for Federal Benefit Payments under the Teachers Plan if the deposit for the service was paid in full to the Teachers Plan as of June 30, 1997.

(2) No credit is allowed for Federal Benefit Payments under the Teachers Plan for any period of civilian service that was not subject to retirement deductions at the time it was performed if the deposit for the service is not paid in full as of June 30, 1997.

(b) *Police and Firefighters Plan.* No credit is allowed for Federal Benefit Payments under the Police and Firefighters Plan for any period of civilian service that was not subject to retirement deductions at the time that the service was performed. (*See* definition of ''governmental service'' at D.C. Code § 4–607(15) (1997).)

§ 28.335 Refunded service.

(a) Periods of civilian service that were subject to retirement deductions but for which the deductions were refunded to the employee are creditable for Federal Benefit Payments if the redeposit for the service was paid in full to the District government as of June 30, 1997.

(b) No credit is allowed for Federal Benefit Payments for any period of civilian service that was subject to retirement deductions but for which the deductions were refunded to the employee if the redeposit for the service was not paid in full to the District government as of June 30, 1997.

Calculation of The Amount of Federal Benefit Payments

§ 28.341 General principle.

Except for disability retirements after June 30, 1997, and certain death benefits based on deaths after June 30, 1997, for cases in which some service becomes creditable on or before June 30, 1997, and some service becomes creditable after June 30, 1997, Federal Benefit Payments are computed under the rules of the applicable plan as though—

(a) The employee were eligible to retire effective July 1, 1997, under the same conditions as the actual retirement (that is, using the annuity computation formula that applies under the plan in effect on June 29, 1997, and the actual retirement age, including any applicable age reduction, based on the age at actual retirement);

(b) The service that became creditable after June 30, 1997, did not exist; and

(c) The average salary is the average salary at separation. (*See* examples 7B, 9, and 13 of appendix A of this subpart.)

§ 28.342 Computed annuity exceeds the statutory maximum.

(a) In cases in which the computed annuity exceeds the statutory maximum:

(1) Federal Benefit Payments may equal total benefits even if the employee had service after June 30, 1997.

(2) If the employee had sufficient service as of June 30, 1997, to qualify for the maximum annuity under the plan, the Federal Benefit Payment is the maximum annuity under the plan. This will be the entire benefit except for any amount in excess of the normal maximum due to unused sick leave, which is the responsibility of the District. (*See* example 3, of appendix A of this subpart.)

(b) If the employee did not perform sufficient service as of June 30, 1997, to reach the statutory maximum benefit, but has sufficient service at actual retirement to exceed the statutory maximum, the Federal Benefit Payment is the amount earned through June 30, 1997. The non-Federal-Benefit-Payment portion of the total benefit consists of only the amount by which the total benefit payable exceeds the Federal Benefit Payment.

§ 28.343 Disability benefits.

(a) The general rule that Federal Benefit Payments are calculated under the applicable retirement plan as though the employees were eligible for optional retirement and separated on June 30, 1997, does not apply to disability benefits prior to optional retirement age.

(b) In cases involving disability benefits prior to optional retirement age, no Federal Benefit Payment is payable until the retiree reaches the age of eligibility to receive a deferred annuity (age 55 under the Police and Firefighters Plan and age 62 under the Teachers Plan). When the age for deferred annuity is reached, the Federal Benefit Payment is paid using creditable service accrued as of June 30, 1997 and average salary (computed under the rules for the applicable plan) as of the date of separation. (*See* examples 6 and 7 of appendix A of this subpart.)

§ 28.344 Survivor benefits.

(a) The general rule that Federal Benefit Payments are calculated under the applicable retirement plan as though the employees were eligible for optional retirement and separated on June 30, 1997, does not apply to death benefits that are not determined by length of service.

(b) In cases in which the amount of death benefits is not determined by length of service, the amount of Federal Benefit Payments is calculated by multiplying the amount of the total benefit payable by the number of full months of service through June 30, 1997, and then dividing by the number of months of total service at retirement (for elected survivor benefits) or death (for guaranteed-minimum death-in-service survivor benefits). (*See* example 13 of appendix A of this subpart.)

§ 28.345 Cost-of-living adjustments.

Cost-of-living increases are applied directly to Federal Benefit Payments, rather than computed on the total benefit and then prorated. (*See* example 14 of appendix A of this subpart.)

§ 28.346 Reduction for survivor benefits.

(a) If a retiree designates a base for a survivor annuity that is greater than or

equal to the unreduced Federal Benefit Payment, the applicable plan's annuity reduction formula is applied to the unreduced Federal Benefit Payment to determine the reduced Federal Benefit Payment. (*See* example 10 of appendix A of this subpart.)

(b) If a retiree designates a base for a survivor annuity that is less than the amount of the Federal Benefit Payment, the entire survivor reduction applies to the Federal Benefit Payment to determine the reduced Federal Benefit Payment.

Appendix A to Subpart C—Examples

This appendix contains sample calculations of Federal Benefit Payments in a variety of situations.

Optional Retirement Examples

Example 1: No Unused Sick Leave

A. In this example, an individual covered by the Police and Firefighters Plan hired before 1980 retires in October 1997. At retirement, he is age 51 with 20 years and 3 days of departmental service plus 3 years, 4 months, and 21 days of military service that preceded the departmental service. The Federal Benefit Payment begins at retirement. It is based on the 19 years, 8 months, and 22 days of departmental service and 3 years, 4 months, and 21 days of military service performed as of June 30, 1997. Thus, the Federal Benefit Payment is based on 23 years and 1 month of service, all at the 2.5 percent accrual rate. The total annuity is based on 23 years and 4 months of service, all at the 2.5 percent accrual rate.

EXAMPLE 1A.—POLICE OPTIONAL

[Pre-80 hire]

Total Annuity Computation

Birth date: 09/10/46
Hire date: 10/09/77
Separation date: 10/11/97
Department service: 20/00/03
Other service: 03/04/21
Sick leave:
.025 service: 23.333333
.03 service:
Average salary: $45,680.80
Total: $26,647.13
Total/month: $2,221.00

Federal Benefit Payment Computation

Birth date: 09/10/46
Hire date: 10/09/77
Separation date: 06/30/97
Department service: 19/08/22
Other service: 03/04/21
Sick leave:
.025 service: 23.083333
.03 service:
Average salary: $45,680.80
Total: $26,361.63
Total/month: $2,197.00

B. In this example, the individual covered by the Police and Firefighters Plan was hired earlier than in example 1A and thus performed more service as of both June 30, 1997, and retirement in October 1997. At retirement, he is age 51 with 21 years, 11 months and 29 days of departmental service plus 3 years, 4 months, and 21 days of military service that preceded the departmental service. The Federal Benefit Payment begins at retirement. It is based on the 21 years, 8 months, and 18 days of departmental service and 3 years, 4 months, and 21 days of military service performed as of June 30, 1997. Thus, the Federal Benefit Payment is based on 25 years and 1 month of service, 1 year and 8 months at the 3.0 percent accrual rate and 23 years and 5 months at the 2.5 percent accrual rate (including 1 month consisting of 18 days of departmental service and 21 days of other service). The total annuity is based on 25 years and 4 months of service, 1 year and 11 months at the 3.0 percent accrual rate and 23 years and 5 months at the 2.5 percent accrual rate (including 1 month consisting of 29 days of departmental service and 21 days of other service).

EXAMPLE 1B.—POLICE OPTIONAL

[Pre-80 hire]

Total Annuity Computation

Birth date: 09/10/46
Hire date: 10/13/75
Separation date: 10/11/97
Department service: 21/11/29
Other service: 03/04/21
Sick leave:
.025 service: 23.416667
.03 service: 1.916667
Average salary: $45,680.80
Total: $29,368.95
Total/month: $2,447.00

Federal Benefit Payment Computation

Birth date: 09/10/46
Hire date: 10/13/75
Separation date: 06/30/97
Department service: 21/08/18
Other service: 03/04/21
Sick leave:
.025 service: 23.416667
.03 service: 1.666667
Average salary: $45,680.80
Total: $29,026.34
Total/month: $2,419.00

Example 2: Unused Sick Leave Credit

In this example, an individual covered by the Police and Firefighters Plan and hired before 1980 retires in March 1998. At retirement, she is age 48 with 24 years, 8 months, and 6 days of departmental service plus 6 months and 4 days of other service (deposit paid before June 30, 1997) and 11 months and 11 days of unused sick leave. For a police officer (or a non-firefighting division firefighter) such an amount of sick leave would be 1968 hours (246 days, based on a 260-day year, times 8 hours per day). For a firefighting division firefighter, such an amount would be 2069 hours (341 days divided by 360 days per year times 2184 hours per year). The Federal Benefit Payment begins at retirement. It is based on the 23 years, 11 months, and 23 days of departmental service performed as of June 30, 1997, and 6 months and 4 days of other service. Thus, the Federal Benefit Payment is based on 20 years departmental and 6 months of other service at the 2.5 percent accrual rate and 3 years and 11 months of service at the 3.0 percent accrual rate. The total annuity is based on 20 years and 6 months of service at the 2.5 percent accrual rate and 5 years and 7 months of service at the 3 percent accrual rate.

EXAMPLE 2.—POLICE OPTIONAL

[Pre-80 hire]

Total Annuity Computation

Birth date: 05/01/49
Hire date: 07/08/73
Separation date: 03/13/98
Department service: 24/08/06
Other service: 00/06/04
Sick leave: 00/11/11
.025 service: 20.5
.03 service: 5.583333
Average salary: $61,264.24
Total: $41,659.68
Total/month: $3,472.00

Federal Benefit Payment Computation

Birth date: 05/01/49
Hire date: 07/08/73
Separation date: 06/30/97
Department service: 23/11/23
Other service: 00/06/04
Sick leave:
.025 service: 20.5
.03 service: 3.916667
Average salary: $61,264.24
Total: $38,596.47
Total/month: $3,216.00

Example 3: Calculated Benefit Exceeds Statutory Maximum

A. In this example, an individual covered by the Police and Firefighters Plan hired before 1980 retires in March 1998. At retirement, he is age 55 with 32 years and 17 days of departmental service. The Federal Benefit Payment begins at retirement. It is based on the 31 years, 3 months, and 17 days of departmental service performed as of June 30, 1997. Thus, the Federal Benefit Payment is based on 20 years of service at the 2.5 percent accrual rate and 11 years and 3 months of service at the 3.0 percent accrual rate. However, the annuity is limited to 80 percent of the basic salary at time of retirement. (This limitation does not apply to the unused sick leave credit.) The annuity computed as of June 30, 1997, equals the full benefit payable; therefore, the Federal Benefit Payment is the total benefit.

EXAMPLE 3A.—POLICE OPTIONAL

[Pre-80 hire]

Total Annuity Computation

Birth date: 06/12/42
Hire date: 03/14/66
Separation date: 03/30/98

EXAMPLE 3A.—POLICE OPTIONAL—Continued

[Pre-80 hire]

Department service: 32/00/17
Other service:
Sick leave:
.025 service: 20
.03 service: 12
Average salary: $75,328.30
Final salary: $77,180.00
Total: $64,782.34
Total/month: $5,399.00
Maximum: $61,744.00
$5,145.00

Federal Benefit Payment Computation

Birth date: 06/12/42
Hire date: 03/14/66
Separation date: 06/30/97
Department service: 31/03/17
Other service:
Sick leave:
.025 service: 20
.03 service: 11.25
Average salary: $75,328.30
Final salary: $77,180.00
Total: $63,087.45
Total/month: $5,257.00
Maximum: $61,744.00
$5,145.00

B. In this example, the individual in example 3B also has 6 months of unused sick leave at retirement. The sick leave credit is not subject to the 80% limitation and does not become creditable service until the date of separation. For a police officer (or a non-firefighting division firefighter) such an amount of sick leave would be 1040 hours (130 days, based on a 260-day year, times 8 hours per day). For a firefighting division firefighter, such an amount would be 1092 hours (180 days divided by 360 days per year times 2184 hours per year). Six months of unused sick leave increases the annual total benefit by 1.5 percent of the average salary, or in the example by $94 per month. The District is responsible for the portion of the annuity attributable to the unused sick leave because it became creditable at retirement, that is, after June 30, 1997.

EXAMPLE 3B.—POLICE OPTIONAL

[Pre-80 hire]

Total Annuity Computation

Birth date: 06/12/42
Hire date: 03/14/66
Separation date: 03/30/98
Department service: 32/00/17
Other service:
Sick leave: 00/06/00
.025 service: 20
.03 service: 12
Average salary: $75,328.30
Final salary: $77,180.00
Total wo/sl credit: $64,782.34
Total/month: $5,399.00
Max wo/sl credit: $61,744.00
Max w/sl credit: $62,873.92
Monthly benefit: $5,239.00

EXAMPLE 3B.—POLICE OPTIONAL—Continued

[Pre-80 hire]

Federal Benefit Payment Computation

Birth date: 06/12/42
Hire date: 03/14/66
Freeze date: 06/30/97
Department service: 31/03/17
Other service:
Sick leave: none
.025 service: 20
.03 service: 11.25
Average salary: $75,328.30
Final Salary: $77,180.00
Total: $63,087.45
Total/month: $5,257.00
Maximum: $61,744.00
Monthly benefit: $5,145.00

Example 4: Excess Leave Without Pay

In this example, an individual covered by the Teachers Plan hired before 1996 retires in February 1998. At retirement, she is age 64 with 27 years of departmental service and 6 years, 7 months, and 28 days of other service (creditable before June 30, 1997). However, only 6 months of leave in a fiscal year without pay may be credited toward retirement under the Teachers Plan. She had 3 months and 18 days of excess leave without pay as of June 30, 1997. Since the excess leave without pay occurred before June 30, 1997, the time attributable to the excess leave without pay is subtracted from the service used in both the Federal Benefit Payment and the total benefit computations. The Federal Benefit Payment begins at retirement. It is based on the 32 years and 8 months of service (32 years, 11 months, and 28 days minus 3 months and 18 days and the partial month dropped); 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 22 years and 8 months of service at the 2 percent accrual rate. The total annuity is based on 33 years and 4 months of service (33 years, 7 months and 28 days minus 3 months and 18 days and the partial month dropped) 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate and 23 years and 4 months of service at the 2 percent accrual rate.

Note: For the Teachers Plan, section 1230(a) of title 31 of the D.C. Code (1997) allows for 6 months leave without pay in any fiscal year. For the Police and Firefighters Plan, section 610(d) of title 4 of the D.C. Code (1997) allows for 6 months leave without pay in any calendar year.

EXAMPLE 4.—TEACHERS OPTIONAL

[Pre-96 hire]

Total Annuity Computation

Birth date: 11/04/33
Hire date: 03/01/71
Separation date: 02/28/98
Department service: 27/00/00
Other service: 06/07/28
Excess LWOP: 00/03/18
.015 service: 5

EXAMPLE 4.—TEACHERS OPTIONAL—Continued

[Pre-96 hire]

.0175 service: 5
.02 service: 23.333333
Average salary: $53,121.00
Total: $33,421.96
Total/month: $2,785.00

Federal Benefit Payment Computation

Birth date: 11/04/33
Hire date: 03/01/71
Freeze date: 06/30/97
Department service: 26/04/00
Other service: 06/07/28
Excess LWOP: 00/03/18
.015 service: 5
.0175 service: 5
.02 service: 26.666667
Average salary: $53,121.00
Total: $32,713.68
Total/month: $2,726.00

Example 5: Service Credit Deposits

A. An individual covered by the Teachers Plan hired before 1996 retires in October 1997. At retirement, he is age 61 with 30 years and 3 days of departmental service plus 3 years, 4 months, and 21 days of other service that preceded the departmental service for which the deposit was fully paid on or before June 30, 1997. The Federal Benefit Payment begins at retirement. It is based on the 29 years, 8 months, and 22 days of departmental service and 3 years, 4 months, and 21 days of service performed as of June 30, 1997. Thus, the Federal Benefit Payment is based on 33 years and 1 month of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 23 years and 1 month of service at the 2 percent accrual rate. The total annuity is based on 33 years and 4 months of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate and 23 years and 4 months of service at the 2 percent accrual rate.

EXAMPLE 5A.—TEACHERS OPTIONAL

[Pre-96 hire]

Total Annuity Computation

Birth date: 09/10/36
Hire date: 10/09/67
Separation date: 10/11/97
Department service: 30/00/03
Other service: 03/04/21
Deposit paid before freeze date
Other service credit allowed
Sick leave
.015 service: 5
.0175 service: 5
.02 service: 23.333333
Average salary: $45,680.80
Total: $28,740.84
Total/month: $2,395.00

Federal Benefit Payment Computation

Birth date: 09/10/36
Hire date: 10/09/67

EXAMPLE 5A.—TEACHERS OPTIONAL—Continued

[Pre-96 hire]

Freeze date: 06/30/97
Department service: 29/30/22
Other service: 03/04/21
Deposit paid before freeze date
Other service credit allowed
Sick leave
.015 service: 5
.0175 service: 5
.02 service: 23.083333; 13 days dropped
Average salary: $45,680.80
Total: $28,512.43
Total/month: $2,376.00

B. In this example, the employee in example 5A did not pay any of the deposit to obtain credit for the 3 years, 4 months, and 21 days of other service as of June 30, 1997.Thus, none of the other service is used in the computation of the Federal Benefit Payment.

An individual covered by the Teachers Plan hired before 1996 retires in October 1997. At retirement, he is age 61 with 30 years and 3 days of departmental service plus 3 years, 4 months, and 21 days of other service that preceded the departmental service for which the deposit was paid in full in October 1997 (at retirement). The Federal Benefit Payment begins at retirement. It is based on only the 29 years, 8 months, and 22 days of departmental service performed as of June 30, 1997; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 19 years and 8 months of service at the 2 percent accrual rate. The total annuity is based on 33 years and 4 months of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate and 23 years and 4 months of service at the 2 percent accrual rate.

EXAMPLE 5B.—TEACHERS OPTIONAL

[Pre-96 hire]

Total Annuity Computation

Birth date: 09/10/36
Hire date: 10/09/67
Separation date: 10/11/97
Department service: 30/00/03
Other service: 03/04/21
Total deposit paid after: 6/30/97
Sick leave
.015 service: 5
.0175 service: 5
.02 service: 23.333333
Average salary:: $45,680.80
Total: $28,740.84
Total/month: $2,395.00

Federal Benefit Payment Computation

Birth date: 09/10/36
Hire date: 10/09/67
Freeze date: 06/30/97
Department service: 29/08/22
Other service: none
Total deposit paid after: 6/30/97
Sick leave:
.015 service: 5

EXAMPLE 5B.—TEACHERS OPTIONAL—Continued

[Pre-96 hire]

.0175 service: 5
.02 service: 19.666667; 22 days dropped
Average salary:: $45,680.80
Total: $25,390.91
Total/month: $2,116.00

C. In this example, the employee in examples 5A and B began installment payments on the deposit to obtain credit for the 3 years, 4 months, and 21 days of other service as of June 30, 1997, but did not complete the deposit until October 1997 (at retirement). The other service is not used in the computation of the Federal Benefit Payment because the payment was not completed as of June 30, 1997. Thus, the result is the same as in example 5B.

EXAMPLE 5C.—TEACHERS OPTIONAL

[Pre-96 hire]

Total Annuity Computation

Birth date: 09/10/36
Hire date: 10/09/67
Separation date: 10/11/97
Department service: 30/00/03
Other service: 03/04/21
Partial deposit paid as of: 6/30/97
Deposit completed after 6/30/97
Sick leave
.015 service: 5
.0175 service: 5
.02 service: 23.333333
Average salary:: $45,680.80
Total: $28,740.84
Total/month: $2,395.00

Federal Benefit Payment Computation

Birth date: 09/10/36
Hire date: 10/09/67
Freeze date: 06/30/97
Department service: 29/08/22
Other service: none
Partial deposit as of 6/30/97
Deposit completed after 6/30/97
Sick leave
.015 service: 5
.0175 service: 5
.02 service: 19.666667; 22 days dropped
Average salary:: $45,680.80
Total: $25,390.91
Total/month: $2,116.00

Disability Retirement Examples

Example 6: Disability Occurs Before Eligibility for Optional Retirement

A. In this example, an individual covered by the Police and Firefighters Plan hired before 1980 retires based on a disability in the line of duty in October 1997. At retirement, he is age 45 with 18 years, 5 months, and 11 days of departmental service. Since he had performed less than 20 years of service and had not reached the age of eligibility for an optional retirement, the Federal Benefit Payment does not begin at retirement.

When the disability annuitant reaches age 55, he satisfies the age and service requirements for deferred retirement. At that time (August 20, 2007), the Federal Benefit Payment begins. It is based on the 18 years, 1 month, and 17 days of departmental service performed as of June 30, 1997, all at the 2.5 percent accrual rate.

EXAMPLE 6A.—POLICE DISABILITY IN LINE OF DUTY AGE 45

[Pre-80 hire]

Total Annuity Computation

Birth date: 08/20/52
Hire date: 05/14/79
Separation date: 10/24/97
Department service: 18/05/11
Other service
Sick leave
.025 service: 18.416667
.03 service:
Average salary:: $47,788.64
Final salary: $50,938.00
Total: $22,002.69
Total/month: $1,834.00
2/3 of average pay: $31,859.09
Monthly: $2,655.00

Federal Benefit Payment Computation

Birth date: 08/20/52
Hire date: 05/14/79
Separation date: 06/30/97
Department service: 18/01/17
Other service
Sick leave
.025 service: 18.083333
.03 service:
Average salary:: $47,788.64
Final salary: $50,938.00
Total: $21,604.45
Total/month: $1,800.00; deferred

B. In this example, an individual covered by the Teachers Plan hired before 1996 retires based on a disability in December 1997. At retirement, she is age 49 with 27 years and 4 months of departmental service which includes 3 years, 3 months and 14 days of excess leave without pay (prior to June 30, 1997). Since she does not qualify for optional retirement at separation, the Federal Benefit Payment does not begin at separation.

When the disability annuitant reaches age 62, she will satisfy the age and service requirements for deferred retirement. At that time (March 9, 2010), the Federal Benefit Payment begins. The time attributable to the excess leave without pay is subtracted from the service used to compute the Federal Benefit Payment. Since the excess leave without pay occurred before June 30, 1997, the deferred Federal Benefit Payment is based on the 23 years and 6 months of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 13 years and 6

months of service at the 2 percent accrual rate.

EXAMPLE 68.—TEACHERS DISABILITY AGE 49

[Pre-96 hire]

Total Annuity Computation

Birth date: 03/09/48
Hire date: 09/01/70
Separation date: 12/31/97
Department service: 27/04/00
Other service:
Excess LWOP: 03/03/14
.015 service: 5
.0175 service: 5
.02 service: 14
Average salary:: $53,121.00
Total: $23,506.04
Total/month: $1,959.00

Federal Benefit Payment Computation

Birth date: 03/09/48
Hire date: 09/01/70
Freeze date: 06/30/97
Department service: 26/10/00
Other service:
Excess LWOP: 03/03/14
.015 service: 5
.0175 service: 5
.02 service: 13.5
Average salary:: $53,121.00
Total: $22,974.83
Total/month: $1,915.00; deferred

Example 7: Disability Occurs After Eligibility for Optional Retirement

A. In this example, an individual covered by the Police and Firefighters Plan hired before 1980 retires based on a disability in the line of duty in October 1997. At retirement, she is age 55 with 24 years, 5 months, and 11 days of departmental service. Since she was also eligible for optional retirement at the time of separation, the Federal Benefit Payment commences at retirement. It is based on the 24 years, 1 months, and 17 days of departmental service performed as of June 30, 1997. Thus, the Federal Benefit Payment is based on 20 years of service at the 2.5 percent accrual rate and 4 years and 1 month of service at the 3 percent accrual rate. The total annuity is base don the disability formula and is equal to two-thirds of a average pay because that amount is higher than the 63.25 percent payable based on total service.

EXAMPLE 7A.—POLICE DISABILITY IN LINE OF DUTY AGE 55

[pre-80 hire]

Total Annuity Computation

Birth date: 10/01/42
Hire date: 05/14/73
Separation date:10/24/97
Deparment service: 24/05/11
Other service
Sick leave
.025 services: 20
.03 service: 4.416667

EXAMPLE 7A.—POLICE DISABILITY IN LINE OF DUTY AGE 55—Continued

[pre-80 hire]

Average salary: $47,788.64
Final salary: $50,938.00
Total: $30,226.31
Total/month: $2,519.00
2/3 of average pay: $31,859.09
Monthly: $2,655.00

Federal Benefit Payment Computation

Birth date: 10/01/42
Hire date: 05/14/73
Freeze date: 06/30/97
Department service: 24/01/17
Other service
Sick leave
.025 service: 20
.03 service: 4.083333
Average salary: $47,788.64
Final salary: $50,938.00
Total: $29,748.43
Total/month: $2,479.00

B. In this example, an individual covered by the Teachers Plan hired before 1996 retires based on a disability in December 1997. At retirement, he is age 60 with 27 years and 4 months of departmental service which includes 3 years, 3 months and 14 days of excess leave without pay (prior to June 30, 1997). Since he qualifies for optional retirement at separation, the Federal Benefit Payment begins at retirement. Since the excess leave without pay occurred before June 30, 1997, and the total annuity is based on actual service (that is, exceeds the guaranteed disability minimum), the time attributable to the excess leave without pay is subtracted from the service used to compute the Federal Benefit Payment and total benefit. The Federal Benefit Payment is based on 23 years and 6 months of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 13 years and 6 months of service at the 2 percent accrual rate. The total annuity payable is based on 24 years of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 14 years of service at the 2 percent accrual rate.

EXAMPLE 7B.—TEACHERS DISABILITY AGE 60

[Pre-96 hire]

Total Annuity Computation

Birth date: 03/09/37
Hire date: 09/01/70
Separation date: 12/31/97
Department service: 27/04/00
Other service
Excess LWOP03/03/14
.015 service: 5
.0175 service: 5
.02 service: 14
Average salary: $53,121.00
Total: $23,506.04
Total/month: $1,959.00

EXAMPLE 7B.—TEACHERS DISABILITY AGE 60—Continued

[Pre-96 hire]

Federal Benefit Payment Computation

Birth date: 03/09/37
Hire date: 09/01/70
Freeze date: 06/30/97
Department service: 26/10/00
Other service
Excess LWOP03/03/14
.015 service: 5
.0175 service: 5
.02 service: 13.5
Average salary: $53,121.00
Total: $22,974.83
Total/month: $1,915.00

Deferred Retirement Examples

Example 8: All Service Before June 30, 1997

In this example, an individual covered by the Police and Firefighters Plan hired before 1980 separated in March 1986 with title to a deferred annuity. In November 1997, he reaches age 55 and becomes eligible for the deferred annuity based on his 15 years, 9 months, and 8 days of departmental service, all at the 2.5 percent accrual rate. The total annuity is based on the same 15 years, 9 months, and 8 days of service all at the 2.5 percent accrual rate. Since all the service is creditable as of June 30, 1997, the Federal Benefit Payment equals the total annuity.

EXAMPLE 8.—POLICE DEFERRED

[Pre-80 hire]

Total Annuity Computation

Birth date: 11/20/42
Hire date: 06/01/70
Separation date: 03/08/86
Department service: 15/09/08
Other service
Sick leave
.025 service: 15.75
.03 service: 0
Average salary: $30,427.14
Final salary: $45,415.00
Total: $11,980.69
Total/month: $998.00

Federal Benefit Payment Computation

Birth date: 11/20/42
Hire date: 06/01/70
Freeze date: 03/08/86
Department service: 15/09/08
Other service
Sick leave
.025 service: 15.75
.03 service: 0
Average salary: $30,427.14
Final salary: $45,415.00
Total: $11,980.69
Total/month: $998.00

Example 9: Service Straddles June 30, 1997

In this example, an individual covered by the Police and Firefighters Plan hired before 1980 separated in December 1997 with title to a deferred annuity. In November 2007, he will reach age 55 and becomes eligible to receive a deferred annuity. At that time, the Federal Benefit Payment begins. It is based on the 18 years and 1 month of departmental service performed as of June 30, 1997, all at the 2.5 percent accrual rate. The total annuity begins at the same time, based on his 18 years, 6 months, and 8 days of departmental service, all at the 2.5 percent accrual rate.

EXAMPLE 9.—POLICE DEFERRED

[Pre-80 hire]

Total Annuity Computation

Birth date: 11/20/52
Hire date: 06/01/79
Separation date: 12/08/97
Department service: 18/06/08
Other service
Sick leave
.025 service: 18.5
.03 service: 0
Average salary: $30,427.14
Final salary: $45,415.00
Total: $14,072.55
Total/month: $1,173.00

Federal Benefit Payment Computation

Birth date: 11/20/52
Hire date: 06/01/79
Freeze date: 06/30/97
Department service: 18/01/00
other service:
Sick leave:
.025 service: 18.083333
.03 service: 0
Average salary: $30,427.14
Final Salary: $45,415.00
Total: $13,755.60
Total/month $1,146.00; deferred

Reduction to Provide a Survivor Annuity Examples

Example 10: Survivor Reduction Calculations

Both of the following examples involve a former teacher who elected a reduced annuity to provide a survivor benefit.

A. In this example, the employee elected full survivor benefits. The Federal Benefit Payment is reduced by 2½ percent of the first $3600 and 10 percent of the balance. The total annuity is also reduced by 2½ percent of the first $3600 and 10 percent of the balance.

EXAMPLE 10A.—TEACHERS OPTIONAL W/SURVIVOR REDUCTION

[Pre-96 hire]

Total Annuity Computation

Birth date: 11/01/42
Hire date: 11/01/68
Separation date: 12/31/97
Department service: 29/02/00
Other service: 03/09/18

EXAMPLE 10A.—TEACHERS OPTIONAL W/SURVIVOR REDUCTION—Continued

[Pre-96 hire]

Military: 00/09/11
.015 service: 5
.0175 service: 5
.02 service: 23.666667
Average salary: $66,785.00
Total unreduced: $42,464.13
Reduction: $3,976.41
Total reduced: $38,487.72
Total/month: $3,207.00

Federal Benefit Payment Computation

Birth date: 11/01/42
Hire date: 11/01/68
Freeze date: 06/30/97
Department service: 28/08/00
Other service: 03/09/18
Military: 00/09/11
.015 service: 5
.0175 service: 5
.02 service: 23.166667
Average salary: $66,785.00
Total unreduced: $41,796.28
Reduction: $3,909.63
Total reduced: $37,886.65
Total/month: $3,157.00

B. In this example, the employee elects to provide a partial survivor annuity based on $3600 per year. The Federal Benefit Payment is reduced by $90 per year. The total benefit is reduced by $90 per year.

EXAMPLE 10B.—TEACHERS OPTIONAL W/SURVIVOR REDUCTION

[Pre-96 hire]

Total Annuity Computation

Birth date: 11/01/42
Hire date: 11/01/68
Separation date: 12/31/97
Department service: 29/02/00
Other service: 03/09/18
Military: 00/09/11
.015 service: 5
.0175 service: 5
.02 service: 23.666667
Average salary: $66,785.00
Total unreduced: $42,464.13
Reduction: $90.00
Total reduced: $43,374.13
Total/month: $3,531.00

Federal Benefit Payment Computation

Birth date: 11/01/42
Hire date: 11/01/68
Freeze date: 06/30/97
Department service: 28/08/00
Other service: 03/09/18
Military: 00/09/11
.015 service: 5
.0175 service: 5
.02 service: 23.166667
Average salary: $66,785.00
Total unreduced: $41,796.28
Reduction: $90.00
Total reduced: $41,706.28

EXAMPLE 10B.—TEACHERS OPTIONAL W/SURVIVOR REDUCTION—Continued

[Pre-96 hire]

Total/month: $3,476.00

Early Optional or Involuntary Retirement Examples

Example 11: Early Optional With Age Reduction

In this example, an individual covered by the Teachers Plan hired before 1996 retires voluntarily in February 1998, under a special program that allows early retirement with at least 20 years of service at age 50 older, or at least 25 years of service at any age. At retirement, she is 6 full months short of age 55. She has 25 years and 5 months of departmental service; 6 years, 2 months, and 19 days of other service (creditable before June 30, 1997); and 2 months and 9 days of unused sick leave. Since she is not eligible for optional retirement and she is eligible to retire voluntarily only because of the District-approved special program, the Federal Benefit Payment is calculated similar to a disability retirement. It does not begin until she becomes eligible for a deferred annuity at age 62.

When it commences the Federal Benefit Payment will be based on the service creditable as of June 30, 1997: 30 years and 11 months of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 20 years and 11 months of service at the 2 percent accrual rate. The total annuity is based on 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate and 21 years and 9 months of service at the 2 percent accrual rate (including the unused sick leave). Because the Federal Benefit Payment is based on the deferred annuity, rather than the early voluntary retirement, it is not reduced by the age reduction factor used to compute the total benefit.

EXAMPLE 11.—TEACHERS EARLY OUT W/AGE REDUCTION

[Pre-96 hire]

Total Annuity Computation

Birth date: 09/20/43
Hire date: 10/01/72
Separation date: 02/28/98
Department service: 25/05/00
Other service: 06/02/19
Sick leave: 00/02/09
.015 service: 5
.0175 service: 5
.02 service: 21.75
Average salary: $69,281.14
Total unreduced: $41,395.48
Reduction factor: 0.990000
Total reduced: $40,981.53
Total month: $3,415.00

EXAMPLE 11.—TEACHERS EARLY OUT W/AGE REDUCTION—Continued

[Pre-96 hire]

Federal Benefit Payment Computation

Birth date: 09/20/43
Hire date: 10/01/72
Freeze date: 06/30/97
Department service: 24/09/00
Other service: 06/02/19
.015 service: 5
.0175 service: 5
.02 service: 20.916667
Average salary: $69,281.14
Total unreduced: $40,240.80
Reduction factor: 1.000000; no reduction
Total reduced: $40,240.80
Total/month: $3,353.00; deferred

Example 12: Involuntary With Age Reduction

In this example, an individual covered by the Teachers Plan hired before 1996 retires involuntarily in February 1998. At retirement, she is 6 full months short of age 55. She has 25 years and 5 months of departmental service; 6 years, 2 months, and 19 days of other service (creditable before June 30, 1997); and 2 months and 9 days of unused sick leave. The Federal Benefit Payment begins at retirement. It is based on the 30 years and 11 months of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 20 years and 11 months of service at the 2 percent accrual rate. The total annuity is based on 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate and 21 years and 9 months of service at the 2 percent accrual rate (including the unused sick leave). Both the Federal Benefit Payment and the total benefit are reduced by the age reduction factor.

EXAMPLE 12.—TEACHERS INVOLUNTARY W/AGE REDUCTION

[Pre-96 hire]

Total Annuity Computation

Birth date: 09/20/43
Hire date: 10/01/72
Separation date: 02/28/98
Department service: 25/05/00
Other service: 06/02/19
Sick leave: 00/02/09
.015 service: 5
.0175 service: 5
.02 service: 21.75
Average salary: $69,281.14
Total unreduced: $41,395.48
Age reduction factor: 0.990000
Total reduced: $40,981.53
Total month: $3,415.00

Federal Benefit Payment Computation

Birth date: 09/20/43
Hire date: 10/01/72
Freeze date: 06/30/97
Department service: 24/09/00
Other service: 06/02/19
.015 service: 5

EXAMPLE 12.—TEACHERS INVOLUNTARY W/AGE REDUCTION—Continued

[Pre-96 hire]

.0175 service: 5
.02 service: 20.916667
Average salary: $69,281.14
Total unreduced: $40,240.80
Age reduction factor: 0.990000
Total reduced: $39,838.39
Total/month: $3,320.00

Death Benefits Example

Example 13: Death Benefits Calculation

Regardless of whether death occurs in service or after retirement, if the death benefit is not based on the length of service, the portion of a death benefit that is a Federal Benefit Payment is based on the ratio of the number of months of the deceased employee's service as of June 30, 1997, to the number of months of the deceased employee's total service. This proration will always apply to cases of death after retirement in which the survivor annuity is based on the reduction in the employee's annuity to provide the benefit. It also applies to lump-sum benefits and benefits computed under a guaranteed-minimum or a percentage-of-disability-at-retirement formula.

A. In this example, an individual covered by the Teachers Plan retires in April 1998 with 30 years of service and elects to provide a full survivor annuity. He dies in June 1998. The Federal Benefit Payment is 97½ percent (351 months/360 months) of the total survivor benefit.

EXAMPLE 13A.—TEACHERS DEATH BENEFITS

[Pre-96 hire]

Total Annuity Computation

Birth date: 04/01/46
Hire date: 04/01/68
Separation date: 04/01/98
Death date: 06/24/98
Department service: 30/00/00
Other service:
Sick leave:
Months: 360
Annual Benefit: $12,000.00
Monthly Benefit: $1,000.00

Federal Benefit Payment Computation

Birth date: 04/01/46
Hire date: 04/01/68
Freeze date: 06/30/97
Death date: 06/24/98
Department service: 29/03/00
Other service:
Months: 351
$11,700.00
$975.00

B. In this example, a teacher dies in service on June 30, 1998 after 31 years of departmental service. Since the survivor annuity is based on actual service, the Federal Benefit Payment is based on the 30 years of service as of June 30, 1997. The total benefit is based on the 31 years of total service. No proration is appropriate.

EXAMPLE 13B.—TEACHERS DEATH BENEFITS

[Pre-96 hire]

Total Annuity Computation

Birth date: 07/01/39
Hire date: 07/01/67
Separation date: 06/30/98
Death date: 06/30/98
Department service: 31/00/00
Other service:
Sick leave:
Average sal: $38,787.88
Annual Benefit: $12,426.67
Monthly Benefit: $1,036.00

Federal Benefit Payment Computation

Birth date: 07/01/39
Hire date: 07/01/67
Freeze date: 06/30/97
Death date: 06/30/98
Department service: 30/00/00
Other service:
Average sal: $38,787/88
Annual Benefit: $12,000.00
Monthly Benefit: $1,000.00

C. In this example, a teacher dies in service on April 1,1998 after 15 years of departmental service. Since the survivor annuity is based on the guaranteed minimum, the Federal Benefit Payment is a prorated portion of the total benefit. Since the teacher had 171 months of service as of the freeze date and 180 months of service at death, the Federal Benefit Payment equals 171/180ths of the total benefit.

EXAMPLE 13C.—TEACHERS DEATH BENEFITS

[Pre-96 hire]

Total Annuity Computation

Birth date: 04/01/61
Hire date: 04/01/83
Separation date: 04/01/98
Death date: 04/01/98
Department service: 15/00/01
Average salary: $36,000.00
Months: 180
Annual Benefit: $7,920.00
Monthly Benefit: $660.00

Federal Benefit Payment Computation

Birth date: 04/01/61
Hire date: 04/01/83
Freeze date: 06/30/97
Death date: 04/01/98
Department service: 14/03/00
Average salary: $36,000.00
Months: 171
Ratio (171/180): 0.950000
Annual Benefit: $7,524.00
Monthly Benefit: $627.00

Cost of Living Adjustment Examples

Example 14: Application of Cost of Living Adjustments

Cost of living adjustments are applied directly to the Federal Benefit Payment to determine the new rate of the Federal Benefit Payment after a cost of living adjustment.

A. In this example, the cost of living adjustment is the same for the Federal Benefit Payment and the non-Federal Benefit Payment portion of the total benefit. Effectively, the total cost of living adjustment is proportionally split between the Federal Benefit Payment and the non-Federal Benefit Payment.

EXAMPLE 14A.—TEACHERS COST OF LIVING ADJUSTMENT

[Pre-96 hire]

Benefit Computation (at retirement)

Total annuity computation:
Birth date: 11/04/48
Hire date: 03/01/86
Separation date: 02/28/2013
Department service: 27/00/00
Other service: 06/07/28
Paid in 1995:
Excess LWOP in 1990: 00/03/18
.015 service: 5
.0175 service: 5
.02 service: 23.333333
Average salary: $53,121.00
Total: $33,421.96
Total/month: $2,785.00

Federal Benefit Payment Computation:
Birth date: 11/04/48
Hire date: 03/01/86
Freeze date: 06/30/1997
Department service: 11/04/00
Other service: 06/07/28
Paid in 1995:
Excess LWOP in 1990: 00/03/18
.015 service: 5
.0175 service: 5
.02 service: 7.666667
Average salary: $53,121.00
Total: $16,777.38
Total/month: $1,398.00

COLA Computation

DC COLA rate 4%
Total COLA: 111
New rate: 2896
Federal COLA rate: 4%
Federal COLA: 56
New rate: 1454

B. In this example, a new District plan applies a different cost of living adjustment than is provided for the Federal Benefit Payment. The Federal Benefit Payment will be unaffected by the new District plan. In such a case, the total cost of living adjustment is no longer proportionally split between the Federal Benefit Payment and the non-Federal Benefit Payment.

EXAMPLE 14B.—TEACHERS COST OF LIVING ADJUSTMENT

[Pre–96 hire]

Benefit Computation (at retirement)

Total annuity computation:
Birth date: 11/04/48
Hire date: 03/01/86
Separation date: 02/28/2013
Department service: 27/00/00
Other service: 06/07/28
Paid in 1995:
Excess LWOP in 1990: 00/03/18
.015 service: 5
.0175 service: 5
.02 service: 23.333333
Average salary: $53,121.00
Total: $33,421.96
Total/month: $2,785.00

Federal Benefit Payment computation:
Birth date: 11/04/48
Hire date: 03/01/86
Freeze date: 06/30/1997
Department service: 11/04/00
Other service: 06/07/28
Paid In 1995:
Excess LWOP in 1990: 00/03/18
.015 service: 5
.0175 service: 5
.02 service: 7.666667
Average salary: $53,121.00
Total: $16,777.38
Total/month: $1,398.00

COLA Computation Variations

Variation 1

DC Cola rate 5% of total benefit
Total COLA: $139.00
New rate: $2,924.00
Federal COLA rate 4% of Federal Benefit Payment
Federal COLA: $56.00
New rate: $1,454.00

Variation 2

DC COLA rate 5% of DC Payment
Total COLA: $125.00
New rate: $2,910.00
Federal COLA rate 4% of Federal Benefit Payment
Federal COLA: $56.00
New rate: $1,454.00

Retroactive Payment of Accrued Annuity Example

Example 15: Accrual of Federal Benefit Payment

The Federal Benefit Payment begins to accrue on the annuity commencing date, regardless of whether the employee is added to the annuity roll in time for the regular payment cycle. If the employee is due a retroactive payment of accrued annuity, the portion of the retroactive payment that would have been Federal Benefit Payment (if it were made in the regular payment cycle) is still Federal Benefit Payment.

In this example, a teacher retired effective September 11, 1998. She was added to the retirement rolls on the pay date November 1, 1998 (October 1 to October 31 accrual cycle). Her Federal Benefit Payment is $3000 per month and her total benefit payment is $3120 per month. Her initial check is $5200 because it includes a prorated payment for 20 days (September 11 to September 30). The Federal Benefit Payment is $5000 of the initial check ($3000 for the October cycle and $2000 for the September cycle).

EXAMPLE 15.—TEACHERS ACCRUED BENEFIT

[Pre-96 hire]

Total Annuity Computation

Birth date: 11/01/42
Hire date: 09/01/66
Separation date: 09/10/98
Department service: 32/00/10
.015 service: 5
.0175 service: 5
.02 service: 22
Average salary: $62,150.00
Total: $37,445.38
Total/month: $3,120.00

Sept 11–30: $2,080.00
Oct 1–31: $3,120.00
Nov 1–30: $3,120.00

Federal Benefit Payment Computation

Birth date: 11/01/42
Hire date: 09/01/66
Freeze date: 06/30/97
Department service: 30/10/00
.015 service: 5
.0175 service: 5
.02 service: 20.833333
Average salary: $62,150.00
Total: $35,995.21
Total/month: $3,000.00
Sept 11–30: $2,000.00
Oct 1–31: $3,000.00
Nov 1–30: $3,000.00

[FR Doc. 99–32168 Filed 12–10–99; 8:45 am]
BILLING CODE 4810–25–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 217 and 219

National Forest System Land and Resource Management Planning

AGENCY: Forest Service, USDA.

ACTION: Notice of supplemental information.

SUMMARY: On October 5, 1999, the Forest Service published a proposed rule to guide land and resource management planning on national forests and grasslands. On October 19, 1999, the agency published a notice of 23 national town meetings to be held for purposes of explaining and receiving written comment on the proposed rule. The Forest Service is now publishing

the briefing materials and questions used at the public meetings to ensure that those who cannot attend the meetings have an opportunity to use this information for providing comment.

DATES: Comment on the proposed rule, including the information in this notice, must be received in writing by January 4, 2000.

ADDRESSES: Send written comments on the proposed planning rule to the CAET–USDA, Attn: Planning Rule, Forest Service, USDA, 200 East Broadway, Room 103, Post Office Box 7669, Missoula, MT 59807; via email to planreg/wo__caet@fs.fed.us; or via facsimile to (406) 329–3021.

Comments, including names and addresses when provided, are subject to public inspection and copying. The public may inspect comments received on the proposed rule in the Office of Deputy Chief, Third Floor, Southwest Wing, Yates Building, 14th and Independence Ave., SW, Washington, D.C. between the hours of 8:30 AM and 4:00 PM.

FOR FURTHER INFORMATION CONTACT: Bob Cunningham, Ecosystem Management Coordination Staff, telephone: (406) 329–3388.

SUPPLEMENTARY INFORMATION: A Committee of Scientists was chartered by Agriculture Secretary Dan Glickman to advise the Forest Service on improvements that could be made in the National Forest System Land and Resource Management planning process. The Forest Service published a proposed rule on October 5, 1999 (64 FR 54074). The Committee also recommended that the agency use new and innovative methods of engaging the public in its work. The Forest Service responded to their recommendation by sponsoring a series of 23 town hall meetings across the country on the proposed planning regulation (64 FR 56294).

The town hall meeting format was designed to introduce participants to the major themes contained in the proposed forest planning rule and to create an opportunity for people to talk with each other about the proposed rule. The four themes and discussion questions which follows are being used at the 23 public meetings.

Town Hall Meeting Discussion Questions

Theme 1: Sustainability

After reading the information below about sustainability, please answer the following questions. What do you like about the theme of sustainability and its key points? Do you see areas that need clarification, that are missing, or that you disagree with?

Sustainability means meeting the needs of present generations without compromising the needs of future generations. The proposed rule would affirm ecological, social, and economic sustainability as the overall goal for management of national forests and grasslands. To achieve sustainability, the first priority for management would be the maintenance and restoration of ecological sustainability. This will allow the Forest Service to provide a sustainable flow of products, services, and other values from national forests and grasslands. Making ecological sustainability the first priority does not mean that the agency will maximize the protection plant and animal species to the exclusion of human values and uses. Rather, it means that, without ecologically sustainable systems, other uses of the lands and their resources would be impaired.

Achieving ecological sustainability requires maintaining or restoring ecological integrity, which is defined as: ''An ecosystem that, at multiple geographic and temporary scales, maintains its characteristic diversity of biological and physical components, spatial patterns, structure, and functional processes within its approximate range of historic variability. These processes include disturbance regimes, nutrient cycling, hydrological functions, vegetation succession, and species adaption and evolution. Ecosystems with integrity are resilient and capable of self-renewal in the presence of the cumulative effects of human and natural disturbances.''

The management of national forests and grasslands will promote economic and social sustainability through: (1) Involvement of interested and affected people in Forest Service activities; (2) the development and consideration of relevant social economic information, including the social and economic characteristics of communities affected by Forest Service decisions; and, (3) the production of a range of products, services, and values, such as clean air and water, productive soils, biological diversity, wildlife, wood fiber, employment, community development opportunities, recreation, beauty, inspiration, wonder, and a refuge for the renewal of the human spirit.

Theme 2: Integrating Science

After reading the information below about the theme of integrating science, please answer the following questions. What do you like about the theme of integrating science and its key points? Do you see areas that need clarification, that are missing, or that you disagree with? Integrating science means placing renewed emphasis on the use of best available science and giving scientists a more active role in planning and decisionmaking. The proposed rule: (1) Fosters the exchange of information and ideas among scientists, the public, and the Forest Service; (2) allows for broad-scale and local assessments that examine the ecological, social, and economic conditions and issues affecting an area; (3) emphasizes monitoring and evaluation so that the Forest Service can adopt as conditions change and more is learned over time; (4) links project implementation to monitoring funding, such that projects could not be authorized unless there is a reasonable expectation that adequate funding will be available to complete required project monitoring; (5) establishes science advisory boards designed to improve Forest Service access to the latest scientific information and analysis; (6) allows peer reviews and science consistency checks to ensure that the best available science is used in planning and decisionmaking; and (7) ensures that scientists from a broad range of disciplines and institutions will play an increased role in nearly every stage of land management planning.

Scientists will: (1) Identify new issues and translate new information about the conditions of forests and grasslands; (2) conduct appropriate broad-scale assessments and local analyses; (3) design and review monitoring protocols; (4) conduct peer reviews and science consistency checks; and, (5) formulate potential solutions to issues by analyzing management options.

Theme 3: Creating Living Documents

After reading the information below about creating living documents, please answer the following questions. What do you like about the theme of creating living documents and its key points? Do you see areas that need clarification, that are missing, or that you disagree with?

Creating living documents means creating a planning process that enables Forest Service officials, in conjunction with their public partners, to address emerging issues, public ideas, new information, or changed conditions, more quickly and soundly.

The proposed planning process is designed to continue the learning and innovation that has occurred and continues to occur among the Forest Service and its partners. It is not a ''cookbook'' for making decisions, but a process that encourages the evolution of new ideas. The planning process is

dynamic so that the Forest Service can respond rapidly to issues and opportunities identified through discussions with the public, monitoring, broad-scale or local assessments, new laws and policies, etc.

The scale of Forest Service planning would be based on the scale of the topic to be considered rather than Forest Service administrative boundaries. For example, two, three, or twenty national forest might work together to address a certain issue. Issues extending beyond national forest and grassland boundaries would also be addresses, while respecting private property boundaries. Land management plans are based on realistic funding levels so that they do not create expectations that cannot be fulfilled. Plans become a collection of decisions, like a loose-leaf notebook, that stay current and continue to guide decisions rather than a weighty book that gathers dust on the shelf once it is completed.

Theme 4: Collaboration

The theme of collaboration is an especially important aspect of the proposed rule, and we would like some specific advice from you on this subject. Collaboration means actively engaging the public, interested organizations, and federal, tribal, state and local governments in solving problems that affect national forests and grasslands.

Under the proposed rule, the Forest Service would: (1) Actively engage its partners in Forest Service activities; (2) convene, facilitate, and participate in efforts aimed at solving problems, defining future goals and opportunities, and addressing issues that affect national forests and grasslands; (3) partner with other governments, agencies, companies, and individuals to address issues that are common across a shared landscape; and (4) make future planning processes transparent.

We know that your time and energy are valuable, and given that government entities like the Forest Service have specific duties and responsibilities they must fulfill. The Forest Service, for example cannot give up its final decisionmaking authority. Given this information, what are some general guidelines the Forest Service should follow in working with others in addressing natural resources issues? What are some things the Forest Service can do to best take advantage of your expertise and the skills of other people interested in the future of our national forests and grasslands?

Dated: December 7, 1999.

Hilda Diaz-Soltero,

Associate Chief for Natural Resources.

[FR Doc. 99–32146 Filed 12–10–99; 8:45 am]

BILLING CODE 3410–11–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–217–0204–EC; FRL –6505–6]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, San Joaquin Valley Unified Air Pollution Control District; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of the comment period.

SUMMARY: EPA is reopening the comment period for a proposed rule published October 28, 1999 (64 FR 58008). On October 28, 1999, EPA proposed a limited approval and limited disapproval of revisions to the California State Implementation Plan for the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD). This revision concerns SJVUAPCD Rule 4354 which controls oxides of nitrogen (NO_X) emissions from glass melting furnaces. In response to a request from the California Environmental Associates, EPA is reopoening the comment period for 30 days.

DATES: The comment period is reopened until December 29, 1999.

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

FOR FURTHER INFORMATION CONTACT: Karen Irwin at (415) 744–1903.

Dated: December 1, 1999.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 99–32180 Filed 12–10–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No.991116305–9305–01; I.D. No.110599D]

RIN 0648–AL82

Designated Critical Habitat: Re-Proposed Critical Habitat for Johnson's Seagrass

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

ACTION: Proposed rule; notice of hearing; request for comments; correction.

SUMMARY: In the proposed rule on designating critical habitat for Johnson's seagrass, published on December 2, 1999, the Figures beginning on page 67542 did not have complete latitude and longitude designations. This document corrects the proposed rule.

ADDRESSES: Written comments on this proposed designation of critical habitat should be addressed to the Mr. Charles Oravetz, Assistant Regional Administrator, Protected Resources Division, NMFS, Southeast Regional Office, 9721 Executive Center Drive North, St. Petersburg, Florida 33702–2432. Comments may be sent via facsimile (fax) to 727–570–5517. Comments will not be accepted if submitted via e-mail or Internet. A public hearing on this proposal will be held at the South Florida Water Management District auditorium, 3301 Gun Club Road, West Palm Beach, Florida, 33416–4680 (see **DATES**).

FOR FURTHER INFORMATION CONTACT: Layne Bolen, Southeast Region, Protected Resources Division, NMFS, 727–570–5312, layne.bolen@noaa.gov or Marta Nammack, Office of Protected Resources, NMFS, 301–713–1401, marta.nammack@noaa.gov.

SUPPLEMENTARY INFORMATION:

Need for Correction

In the December 2, 1999 issue of the **Federal Register**, in proposed rule FR Doc. 99–31304, (64 FR 67536), the figures on pages 67542 (Figure 1), 67543 (Figure 2), 67544 (Figure 3), 67545 (Figure 4), 67546 (Figure 5), 67547 (Figure 6), 67549 (Figure 8) and 67550 (Figure 9) had incomplete latitude and longitude designations. This document corrects the latitude and longitude designations as follows:

BILLING CODE 3510–22–P

Figure 1

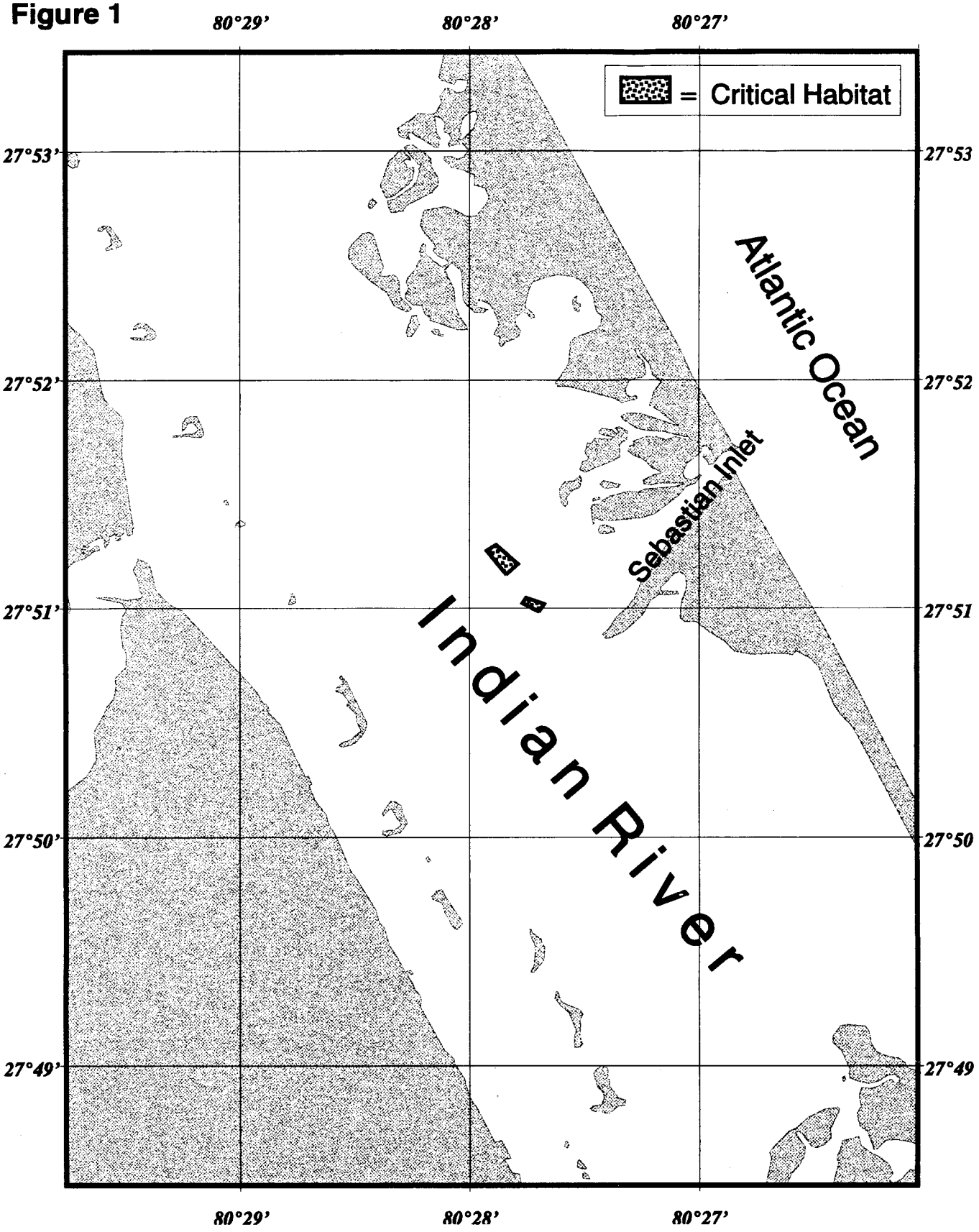

80°29'
80°28'
80°27'
= Critical Habitat
27°53'
27°52'
27°51'
27°50'
27°49'
Atlantic Ocean
Sebastian Inlet
Indian River

Figure 2

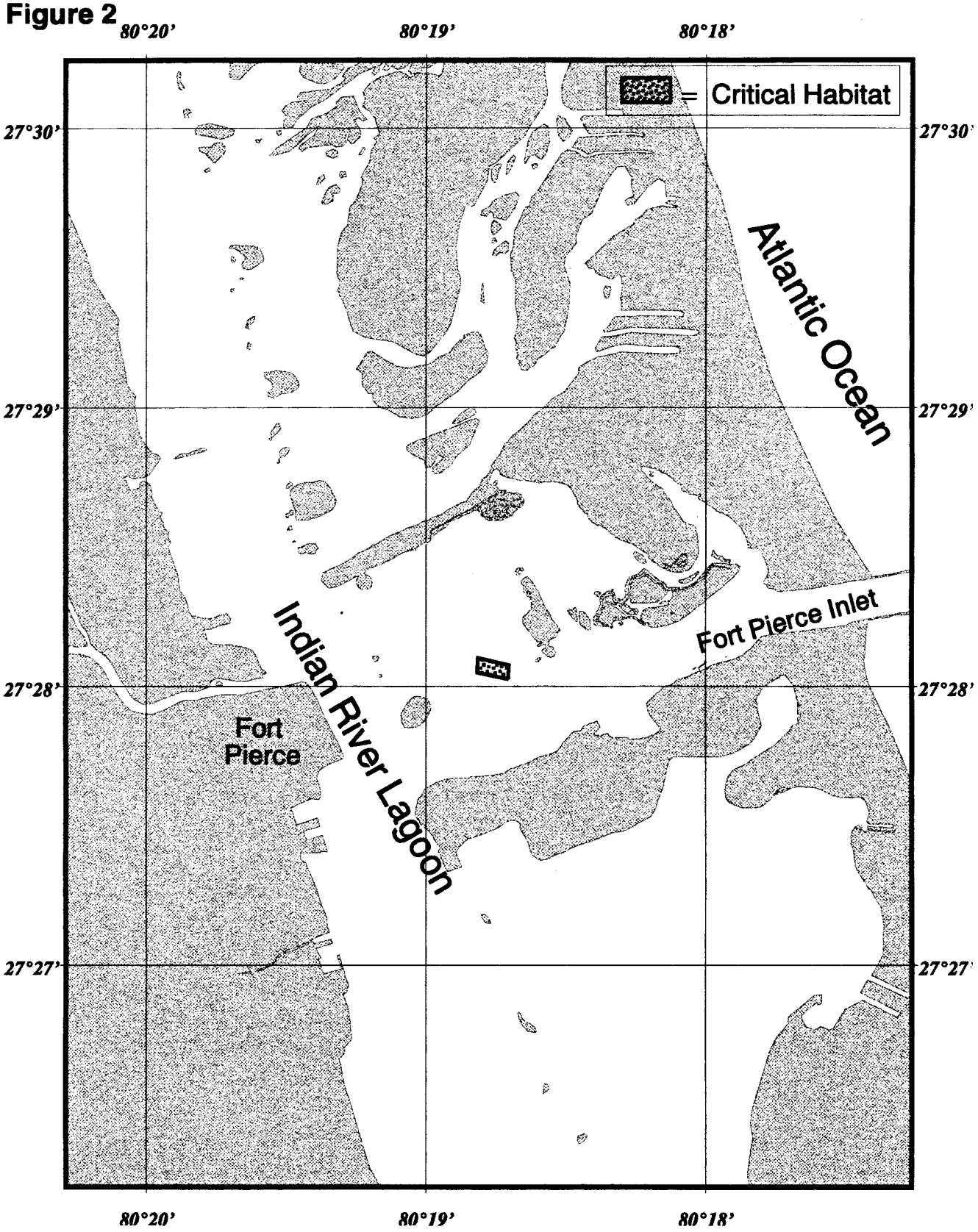

80°20'
80°19'
80°18'
= Critical Habitat
27°30'
27°29'
27°28'
27°27'
Atlantic Ocean
Fort Pierce Inlet
Indian River Lagoon
Fort Pierce

Figure 3

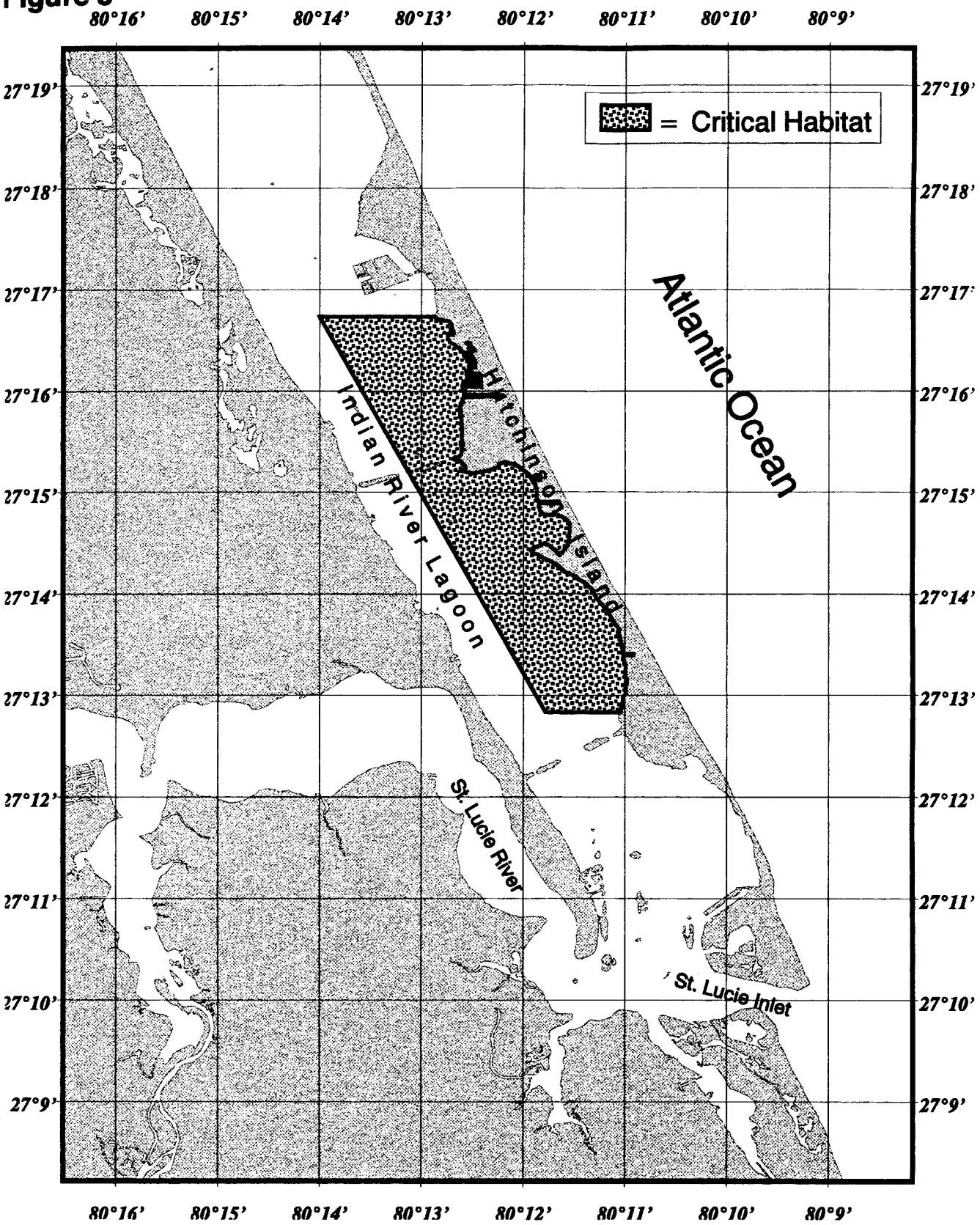

80°16'
80°15'
80°14'
80°13'
80°12'
80°11'
80°10'
80°9'
27°19'
27°18'
27°17'
27°16'
27°15'
27°14'
27°13'
27°12'
27°11'
27°10'
27°9'
= Critical Habitat
Atlantic Ocean
Hutchinson Island
Indian River Lagoon
St. Lucie River
St. Lucie Inlet

Figure 4

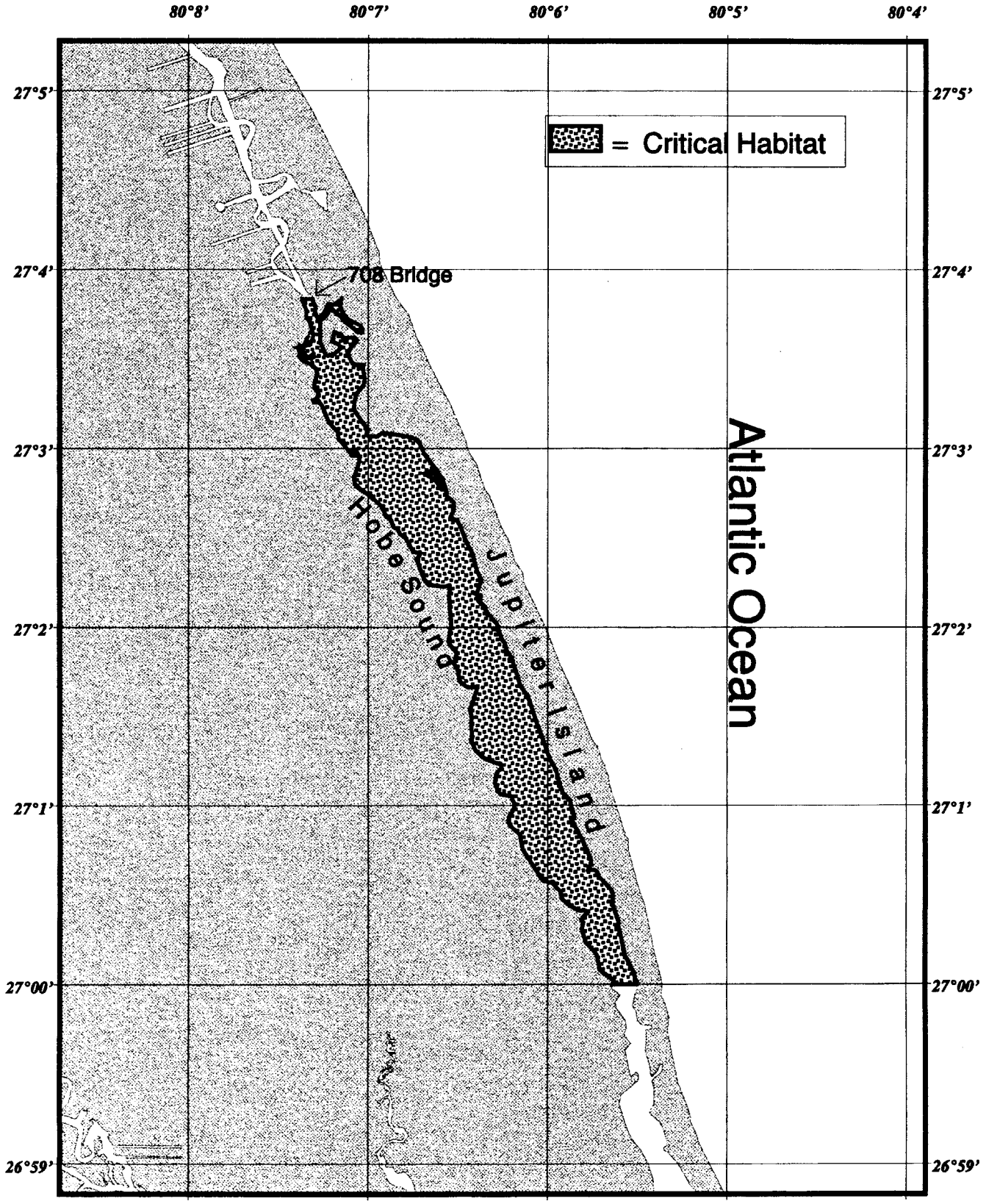

80°8'
80°7'
80°6'
80°5'
80°4'
27°5'
27°4'
27°3'
27°2'
27°1'
27°00'
26°59'
= Critical Habitat
708 Bridge
Hobe Sound
Jupiter Island
Atlantic Ocean

Figure 5

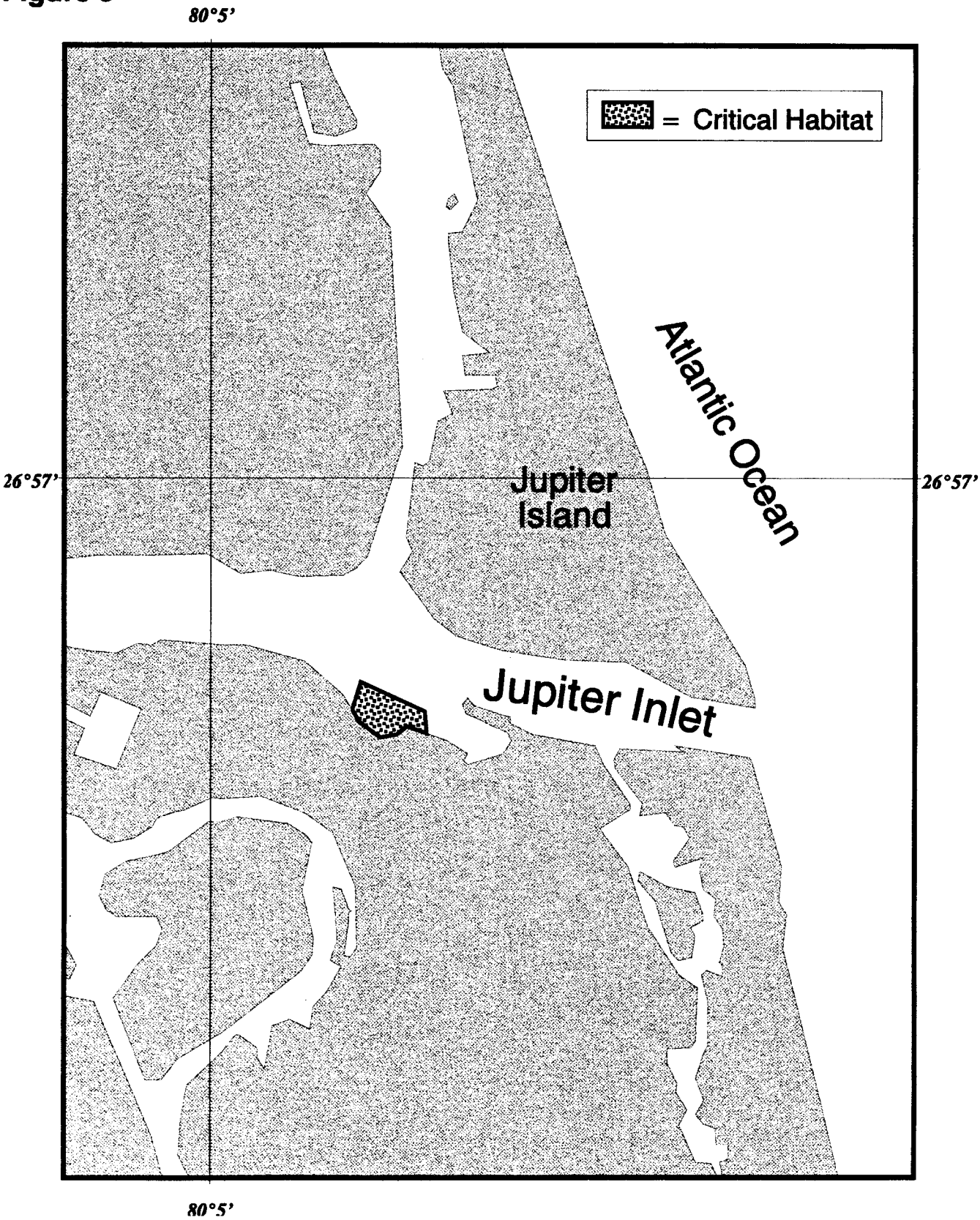

80°5'
= Critical Habitat
Atlantic Ocean
26°57'
Jupiter Island
26°57'
Jupiter Inlet
80°5'

Figure 6

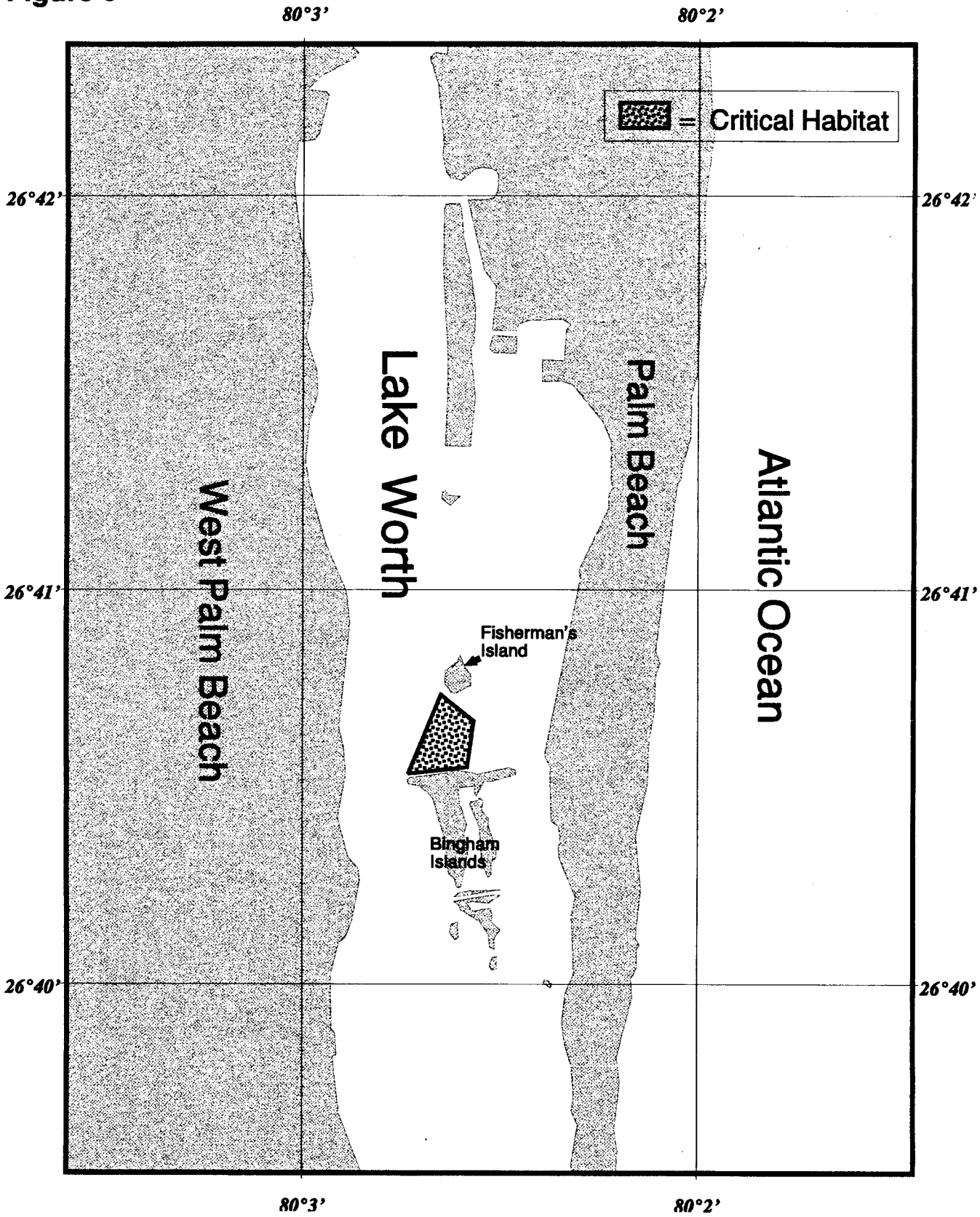

80°3'
80°2'
26°42'
26°41'
26°40'
= Critical Habitat
Atlantic Ocean
Palm Beach
Lake Worth
West Palm Beach
Fisherman's Island
Bingham Islands

Figure 8

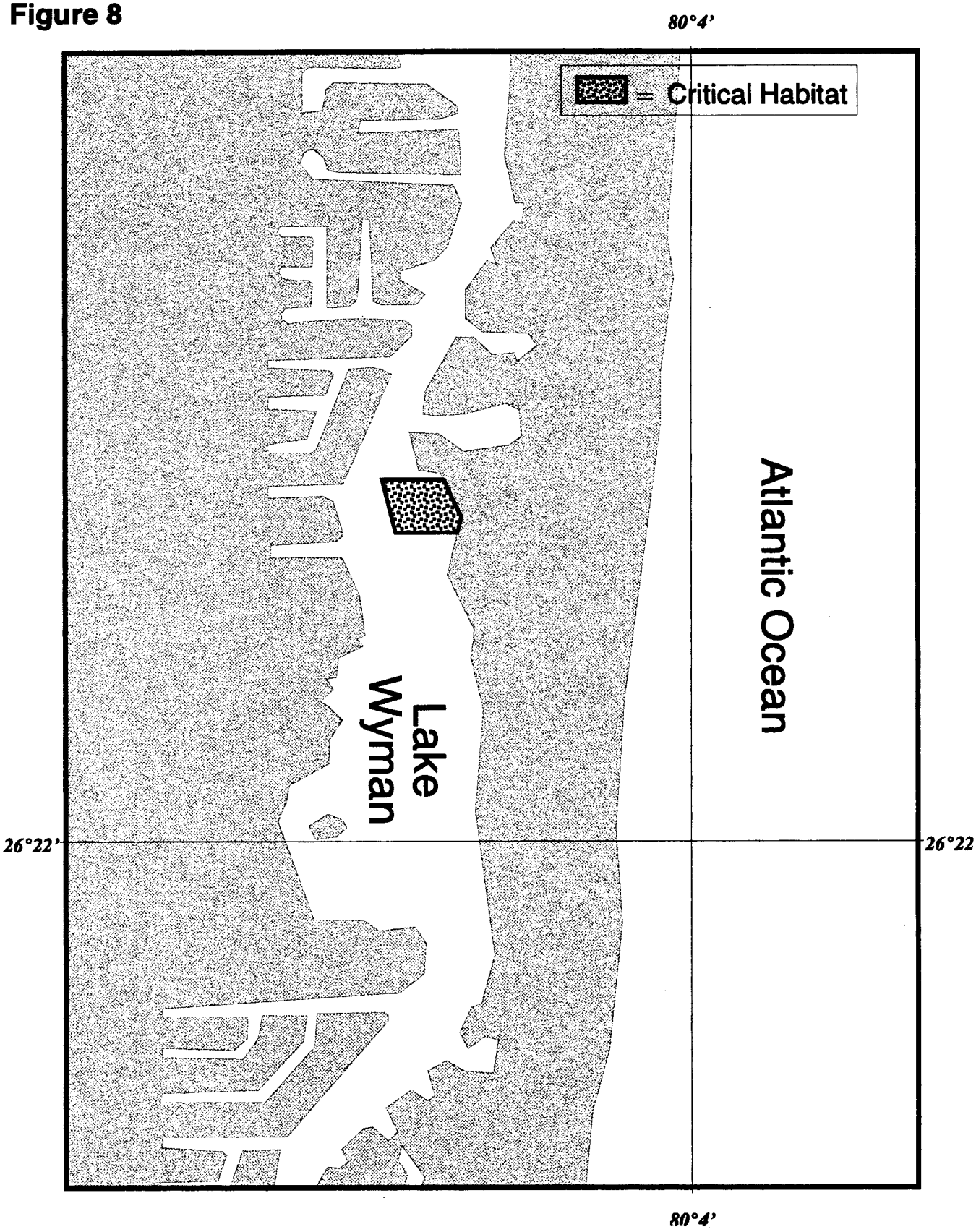
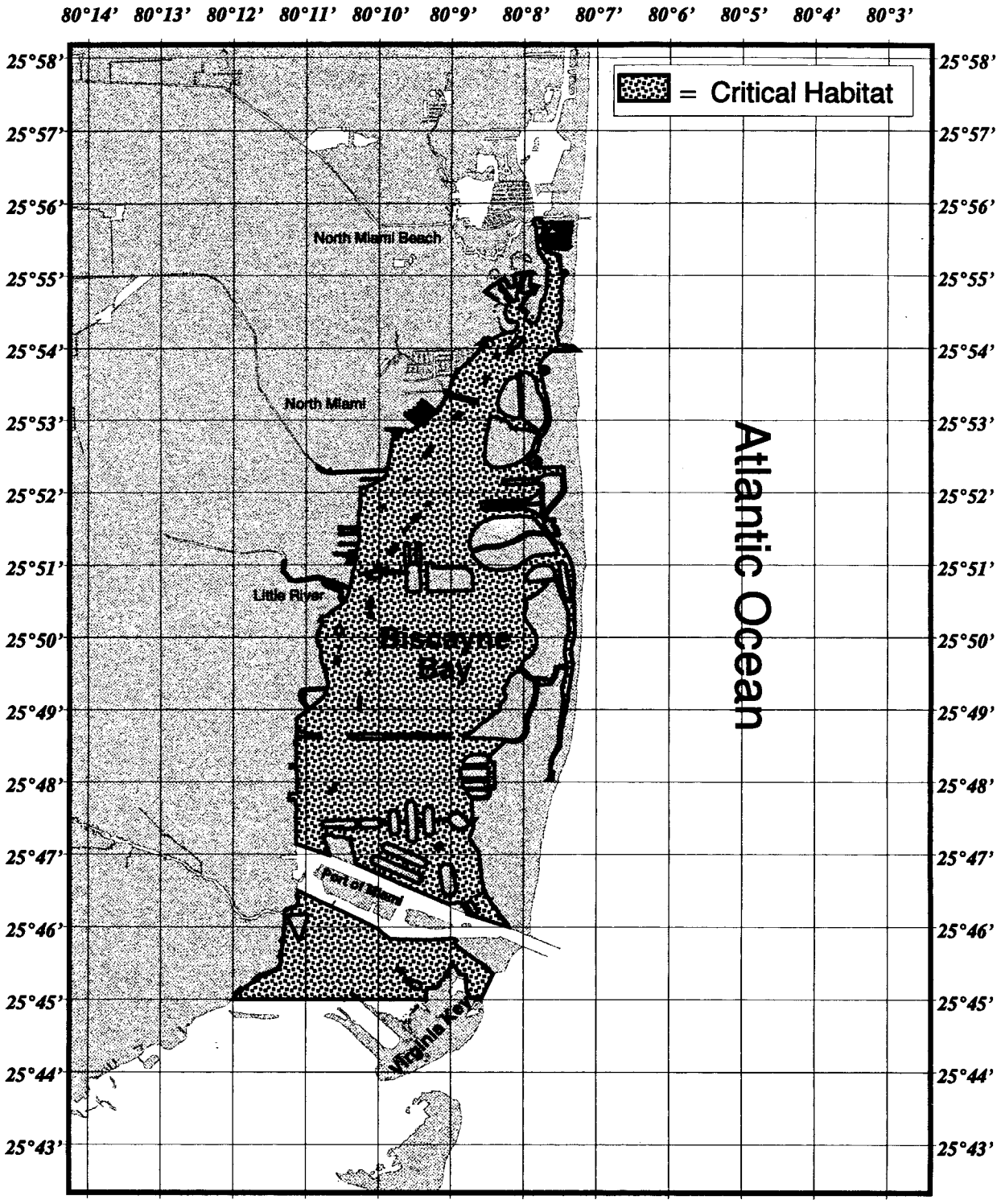

80°4'
= Critical Habitat
Atlantic Ocean
Lake Wyman
26°22'
26°22
80°4'

Figure 9


80°14'
80°13'
80°12'
80°11'
80°10'
80°9'
80°8'
80°7'
80°6'
80°5'
80°4'
80°3'
25°58'
25°57'
25°56'
25°55'
25°54'
25°53'
25°52'
25°51'
25°50'
25°49'
25°48'
25°47'
25°46'
25°45'
25°44'
25°43'
= Critical Habitat
North Miami Beach
North Miami
Little River
Biscayne Bay
Port of Miami
Virginia Key
Atlantic Ocean

Authority: 16 U.S.C. 1553.

Dated: December 7, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–32187 Filed 12–10–99; 8:45 am]

BILLING CODE 3510–22–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991207321–9321–01; I.D. 111899A]

Groundfish Fishery of the Gulf of Alaska; Fisheries of the Exclusive Economic Zone; Gulf of Alaska; Proposed 2000 Harvest Specifications for Groundfish

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

ACTION: Proposed 2000 specifications for groundfish and associated management measures; request for comments.

SUMMARY: NMFS proposes 2000 harvest specifications, reserves, and apportionments for groundfish; Pacific halibut prohibited species catch (PSC) limits; and assumed mortality rates for the groundfish fishery of the Gulf of Alaska (GOA). This action is necessary to establish harvest specifications for GOA groundfish for the 2000 fishing year. The intended effect of this action is to conserve and manage the groundfish resources of the GOA and to provide an opportunity for public participation in the annual groundfish specification process.

DATES: Comments must be received by January 12, 2000.

ADDRESSES: Comments may be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel. Comments also may be sent via facsimile (fax) to 907–586–7465. Comments will not be accepted if submitted via e-mail or Internet. Courier or hand delivery of comments may be made to NMFS in the Federal Building, Room 453, 709 West 9th Street, Juneau, AK 99801.

Copies of the Draft Environmental Assessment/Initial Regulatory Flexibility Analysis (EA/IRFA) prepared for this action and the Preliminary 2000 Stock Assessment and Fishery Evaluation (SAFE) Report, dated September 1999, are available from the North Pacific Fishery Management Council, 605 West 4th Ave., Suite 306, Anchorage, AK 99501–2252 (907–271–2809).

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–481–1780, fax 907–481–1781, or tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background for the 2000 Proposed Specifications

Federal regulations at 50 CFR part 679 implement the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) and govern the groundfish fisheries in the GOA. The North Pacific Fishery Management Council (Council) prepared the FMP, and NMFS approved it under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. General regulations that also pertain to the U.S. fisheries appear at 50 CFR part 600.

The FMP and implementing regulations require NMFS, after consultation with the Council, to specify annually the total allowable catch (TAC) for each target species and for the ''other species'' category, the sum of which must be within the optimum yield range of 116,000 to 800,000 metric tons (mt) (§ 679.20 (a)(1)(ii)). Regulations under § 679.20(c)(1) further require NMFS to publish annually, and solicit public comment on, proposed annual TACs, halibut PSC amounts, seasonal allowances of pollock, and inshore/offshore Pacific cod. The proposed specifications set forth in tables 1 to 6 of this document satisfy these requirements. For 2000, the sum of the proposed TAC amounts is 306,535 mt. Under 679.20(c)(3), NMFS will publish the final specifications for 2000 after: (1) considering comments received within the comment period (see **DATES**); and (2) consulting with the Council.

Regulations at § 679.20(c)(2)(i) provide that interim specifications become effective 0001 hours, Alaska local time (A.l.t.) January 1 and remain in effect until superseded by the final harvest specifications. The regulations provide that the interim specifications will be established as one-fourth of each proposed TAC and apportionment thereof (not including the reserves and the first seasonal allowance of pollock), one-fourth of the proposed halibut PSC amounts, and the proposed first seasonal allowance of pollock. NMFS will publish interim specifications for the 2000 fishing year in a separate **Federal Register** document. No fishing is authorized before NMFS files interim specifications with the Office of the Federal Register.

Proposed Acceptable Biological Catch (ABC) and TAC Specifications

The proposed ABC and TAC for each species are based on the best available biological and socioeconomic information, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods used to calculate stock biomass. This information was compiled by the Council's GOA Plan Team and is presented in the preliminary 2000 SAFE report for the GOA groundfish fisheries, dated September 1999. The Plan Team annually produces such a document as the first step in the process of specifying TACs. The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters, as well as summaries of the available information on the GOA ecosystem and the economic condition of the groundfish fisheries off Alaska. From these data and analyses, the Plan Team estimates an ABC for each species category.

The GOA Plan Team acknowledged that for purposes of the proposed 2000 overfishing levels and ABC amounts, the best information currently available is set forth in the final SAFE report for the 1999 GOA groundfish fisheries dated November 1998. The Plan Team further acknowledged that information on the status of stocks will be updated with the 1999 survey results and reconsidered by the Plan Team at its November 1999 meeting and will be included in the final 2000 SAFE report.

In October 1999, the Scientific and Statistical Committee (SSC), Advisory Panel (AP), and Council reviewed the Plan Team's preliminary recommendations to roll over 1999 ABC, overfishing, and TAC amounts, and to reconsider these amounts at the December 1999 Council meeting after new status of stocks information has been incorporated by the Plan Team into a final SAFE report. The SSC, AP, and Council concurred with the Plan Team's recommendations. However, the Plan Team's recommendation to roll over the 1999 groundfish harvest specifications for this action did not take into account the overfishing definitions approved in the Bering Sea and Aleutian Islands FMP and GOA FMP Amendments 56/56. Those overfishing definitions were used in August 1999 to reanalyze the status of the groundfish stocks in the BSAI and GOA. That analysis is presented in the draft EA prepared for this action. The

overfishing levels in these proposed specifications reflect that analysis. None of the Council's proposed TACs for 1999 exceed the proposed ABC for any species category (Table 1). Therefore, NMFS finds that the proposed TACs are consistent with the best available information on the biological condition of the groundfish stocks.

Specification and Apportionment of TAC Amounts and Reserves

The proposed 2000 TAC amounts equal the 1999 TAC amounts for each species. NMFS finds that the recommended proposed TAC amounts are consistent with the biological condition of groundfish stocks as adjusted for other biological and socioeconomic considerations, including maintaining the total TAC within the required OY range of 116,000 to 800,000 mt.

The reserves for the GOA (under § 679.20(b)(2)) are 20 percent of the TAC amounts for pollock, Pacific cod, flatfish target species categories, and ''other species.'' The GOA groundfish TAC amounts have been fully utilized by the respective domestic target species categories since 1987, and NMFS expects the same to occur in 2000. NMFS proposes apportionment of all the reserves to the respective target species categories except Pacific cod. The Pacific cod fishery in the GOA has become increasingly difficult to manage. The increased number of participants, unexpected increases in harvest rates, and unexpected shifts to other management areas and target species in the GOA have resulted in overharvests of Pacific cod in some areas. Therefore, NMFS proposes initially to reserve 20 percent of the Pacific cod TACs in the GOA as a management buffer to prevent exceeding the Pacific cod TAC.

Table 1 lists the proposed 2000 ABC, TAC, and initial TAC amounts (for Pacific cod only), overfishing levels, and initial apportionments of groundfish in the GOA. The apportionment of TAC amounts among fisheries is set forth in the following tables. These proposed specifications are subject to change as a result of public comment, analysis of the current biological condition of the groundfish stocks, new information regarding the fishery, and consultation with the Council at its December 1999 meeting.

TABLE 1.—PROPOSED 2000 ABCS, TACS, INITIAL TACS (PACIFIC COD ONLY) AND OVERFISHING LEVELS OF GROUNDFISH FOR THE COMBINED WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULF-WIDE (GW) DISTRICTS OF THE GULF OF ALASKA.

[Values are in metric tons.]

Species	Area [1]	ABC	TAC	Initial TAC	Overfishing
Pollock [2]					
Subtotal	W/C	92,480	92,480		157,000
WYK	(640)		2,110		
SEO	(650)		6,330		
Subtotal	E	8,440	8,440		14,400
Total		100,920	100,920		171,400
Pacific cod [3]					
	W	29,540	23,630	18,904	
	C	53,170	42,935	34,348	
	E	1,690	1,270	1,016	
Total		84,400	67,835	54,268	113,000
Flatfish [4] (deep-water)					
	W	240	240		
	C	2,740	2,740		
	WYK	1,720	1,720		
	SEO	1,350	1,350		
Total		6,050	6,050		8,070
Rex sole					
	W	1,190	1,190		
	C	5,490	5,490		
	WYK	850	850		
	SEO	1,620	1,620		
Total		9,150	9,150		11,920
Flathead sole					
	W	8,440	2,000		
	C	15,630	5,000		
	WYK	1,270	1,270		
	SEO	770	770		
Total		26,110	9,040		34,010
Flatfish [5] (shallow-water)					
	W	22,570	4,500		
	C	19,260	12,950		
	WYK	250	250		

TABLE 1.—PROPOSED 2000 ABCS, TACS, INITIAL TACS (PACIFIC COD ONLY) AND OVERFISHING LEVELS OF GROUNDFISH FOR THE COMBINED WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULF-WIDE (GW) DISTRICTS OF THE GULF OF ALASKA.—Continued

[Values are in metric tons.]

Species	Area [1]	ABC	TAC	Initial TAC	Overfishing
	SEO	1,070	1,070		
Total		43,150	18,770		53,400
Arrowtooth flounder					
	W	34,400	5,000		
	C	155,930	25,000		
	WYK	13,260	2,500		
	SEO	13,520	2,500		
Total		217,110	35,000		258,000
Sablefish [6]					
	W	1,820	1,820		
	C	5,590	5,590		
	WYK		2,090		
	SEO		3,200		
Subtotal	E	5,290	5,290		
Total		12,700	12,700		15,000
Pacific [7] ocean perch					
	W	1,850	1,850		2,140
	C	6,760	6,760		7,830
	WYK	820	820		5,230
	SEO	3,690	3,160		
Subtotal	E				5,230
Total		13,120	12,590		15,200
Short raker/rougheye [8]					
	W	160	160		
	C	970	970		
	E	460	460		
Total		1,590	1,590		2,360
Other rockfish [9,10,11]					
	W	20	20		
	C	650	650		
	WYK	470	470		
	SEO	4,130	4,130		
Total		5,270	5,270		6,940
Northern Rockfish [10,12]					
	W	840	840		
	C	4,150	4,150		
	E	N/A [15]	N/A		
Total		4,990	4,990		7,340
Pelagic shelf rockfish [13]					
	W	530	530		
	C	3,370	3,370		
	WYK	740	740		
	SEO	240	240		
Total		4,880	4,880		6,670
Thornyhead rockfish					
	W	260	260		
	C	700	700		
	E	1,030	1,030		
Total		1,990	1,990		2,370
Demersal shelf rockfish [11]	SEO	560	560		698

TABLE 1.—PROPOSED 2000 ABCS, TACS, INITIAL TACS (PACIFIC COD ONLY) AND OVERFISHING LEVELS OF GROUNDFISH FOR THE COMBINED WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULF-WIDE (GW) DISTRICTS OF THE GULF OF ALASKA.—Continued

[Values are in metric tons.]

Species	Area [1]	ABC	TAC	Initial TAC	Overfishing
Atka mackerel	GW	600	600		6,200
Other [14] species	GW	N/A [15]	14,600		
TOTAL [16]		532,590	306,535		712,578

[1] Regulatory areas and districts are defined at § 679.2.

[2] NMFS is not apportioning pollock among the Central and Western Regulatory Areas until permanent reasonable and prudent alternatives can be implemented that would avoid the likelihood that the pollock fisheries off Alaska will jeopardize the continued existence of the western population of Steller sea lions or adversely modify its critical habitat. In the Eastern Regulatory Area, pollock is not divided by seasonal allowances.

[3] Pacific cod is allocated 90 percent for processing by the inshore component and 10 percent for processing by the offshore component. Component allocations are shown in Table 4.

[4] ''Deep water flatfish'' means Dover sole, Greenland turbot, and deepsea sole.

[5] ''Shallow water flatfish'' means flatfish not including ''deep water flatfish,'' flathead sole, rex sole, or arrowtooth flounder.

[6] Sablefish is allocated to trawl and hook-and-line gears (Table 2).

[7] ''Pacific ocean perch'' means *Sebastes alutus.*

[8] ''Shortraker/rougheye rockfish'' means *Sebastes borealis* (shortraker) and *S. aleutianus* (rougheye).

[9] ''Other rockfish'' in the Western and Central Regulatory Areas and in the West Yakutat District means slope rockfish and demersal shelf rockfish. The category ''other rockfish'' in the Southeast Outside District means Slope rockfish.

[10] ''Slope rockfish'' means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), S. *goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegatus* (harlequin), *S. wilsoni* (pygmy), *S. babcocki* (redbanded), S. *proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergrey), S. *diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermilion), and S. *reedi* (yellowmouth). In the Eastern GOA only, ''slope rockfish'' also includes northern rockfish, *S. polyspinous.*

[11] ''Demersal shelf rockfish'' means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S.* helvomaculatus (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).

[12] ''Northern rockfish'' means *Sebastes polyspinis.*

[13] ''Pelagic shelf rockfish'' means *Sebastes ciliatus* (dusky), *S. entomelas* (widow), and *S. flavidus* (yellowtail).

[14] ''Other species'' means sculpins, sharks, skates, squid, and octopus. The TAC for ''other species'' equals 5 percent of the TACs of target species.

[15] N/A means not applicable.

[16] The total ABC is the sum of the ABCs for target species.

Proposed Apportionment of the Sablefish TAC Amounts to Users of Hook-and-Line and Trawl Gear

Under § 679.20(a)(4)(i) and (ii), sablefish TAC amounts for each of the regulatory areas and districts are assigned to hook-and-line and trawl gear. In the Central and Western Regulatory Areas, 80 percent of the TAC amounts is allocated to vessels using hook-and-line gear and 20 percent is allocated to vessels using trawl gear. In the Eastern Regulatory Area, 95 percent of the TAC is assigned to vessels using hook-and-line gear and 5 percent is assigned to vessels using trawl gear. Additionally the Eastern Regulatory Area hook-and-line allocation of sablefish is apportioned between the West Yakutat and Southeast Outside Districts based on biomass distribution. In the Eastern Regulatory Area, the trawl allocation is not apportioned by district although regulations at § 679.7(b) prohibit the use of trawl gear east of 140° W. long. The trawl gear allocation in the Eastern Regulatory Area may only be used for bycatch to support directed fisheries for other trawl target species west of 140° W. long. Sablefish caught in the GOA with gear other than hook-and-line or trawl must be treated as prohibited species and may not be retained. Table 2 shows the assignments of the proposed 2000 sablefish TAC amounts between vessels using hook-and-line and trawl gears.

TABLE 2. PROPOSED 2000 SABLEFISH TAC SPECIFICATIONS IN THE GULF OF ALASKA AND ALLOCATIONS THEREOF TO HOOK-AND-LINE AND TRAWL GEAR.

[Values are in metric tons.]

Area/District	TAC	Hook-and-line apportionment	Trawl apportionment
Western	1,820	1,456	364
Central	5,590	4,472	1,118
West Yakutat	2,090	1,825	265
Southeast Outside	3,200	3,200	0
Total	12,700	10,953	1,747

Proposed Apportionments of Pollock TAC Among Regulatory Areas and Seasons, and Allocations for Processing by Inshore and Offshore Components

NMFS is not establishing seasons or apportioning pollock TAC among the regulatory areas in the Central and Western GOA Regulatory Areas at this time. NMFS is preparing a proposed rule that would permanently implement reasonable and prudent alternatives (RPA's) to avoid the likelihood that the pollock fisheries off Alaska will jeopardize the continued existence of the western population of Steller sea lions or adversely modify its critical habitat. Three types of management measures would be implemented for the pollock fisheries of the Bering Sea and Aleutian Islands Management Area (BSAI) and GOA: (1) Measures to temporally disperse fishing effort, (2) measures to spatially disperse fishing effort, and (3) measures to provide full protection from pollock fisheries that compete with Steller sea lions for prey in waters immediately adjacent to rookeries and important haulouts. Final measures must be effective prior to the start of the BSAI and GOA pollock fisheries on January 20, 2000, or NMFS will be obligated under the Endangered Species Act to close all fishing for pollock until such measures can be implemented.

In the Eastern Regulatory Area pollock would be apportioned between the West Yakutat and Southeast Outside Districts on an annual basis. The pollock TAC in all regulatory areas would be allocated 100 percent to vessels catching pollock for processing by the inshore component after subtraction of amounts that the Regional Administrator, NMFS, determines to be necessary to support the bycatch needs of the offshore component in directed fisheries for other groundfish species (§ 679.20(a)(6)(ii)). At this time, these bycatch amounts are unknown. They would be determined during the fishing year.

Proposed Apportionments of Pacific Cod TAC Amounts

The apportionment of Pacific cod in all GOA regulatory areas would be allocated at 90 percent of the Pacific cod TAC to vessels catching Pacific cod for processing by the inshore component and 10 percent of the Pacific cod TAC to vessels catching Pacific cod for processing by the offshore component (§ 679.20(a)(6)(iii)). Inshore and offshore component allocations of the proposed 54,268 mt initial TAC for Pacific cod for each regulatory area are shown in Table 3.

Beginning in 1997, the Council recommended a GOA Pacific cod TAC lower than the ABC to account for removals from the developing state waters Pacific cod fishery. The Pacific cod TAC could be further reduced for 2000 pending State action to increase the state waters harvest of Pacific cod.

TABLE 3.—PROPOSED 2000 ALLOCATION (METRIC TONS) OF PACIFIC COD INITIAL TAC AMOUNTS IN THE GULF OF ALASKA; ALLOCATIONS FOR PROCESSING BY THE INSHORE AND OFFSHORE COMPONENTS

Regulatory area	Initial TAC	Component Allocation	
		Inshore (90%)	Offshore (10%)
Western	18,904	17,014	1,890
Central	34,348	30,913	3,435
Eastern	1,016	914	102
Total	54,268	48,841	5,427

"Other Species" TAC

The FMP specifies that amounts for the "other species" category are calculated as 5 percent of the combined TAC amounts for target species. The GOA-wide "other species" TAC is calculated as 14,600 mt, which is 5 percent of the sum of combined TAC amounts for the target species.

Proposed Halibut PSC Limits

Under § 679.21(d), annual Pacific halibut PSC limits are established for trawl and hook-and-line gear and may be established for pot gear. In October 1999, the Council recommended that NMFS re-establish the 1999 halibut PSC limits of 2,000 mt for the trawl fisheries and 300 mt for the hook-and-line fisheries, with 10 mt of the hook-and-line limit allocated to the demersal shelf rockfish (DSR) fishery in the Southeast Outside District and the remainder to the remaining hook-and-line fisheries.

Regulations at § 679.21(d)(4) authorize exemption of specified nontrawl fisheries from the halibut PSC limit. The Council proposes to exempt pot gear, jig gear, and the hook-and-line sablefish fishery from the nontrawl halibut limit for 2000. The Council proposed these exemptions because the halibut bycatch mortality experienced in the pot gear

fisheries is relatively low (17 mt in 1996, 13 mt in 1997, 13 mt in 1998, and 44 mt in 1999) and because the halibut and sablefish Individual Fishing Quota (IFQ) program, implemented in 1995, allows retention of legal-sized halibut in the sablefish fishery by persons holding IFQ permits for halibut.

Under § 679.21(d)(5), NMFS seasonally apportions the halibut PSC limits based on recommendations from the Council. The FMP requires that the following information be considered by the Council in recommending seasonal apportionments of halibut PSC limits: (1) Seasonal distribution of halibut, (2) seasonal distribution of target groundfish species relative to halibut distribution, (3) expected halibut bycatch needs on a seasonal basis relative to changes in halibut biomass and expected catches of target groundfish species, (4) expected bycatch rates on a seasonal basis, (5) expected changes in directed groundfish fishing seasons, (6) expected actual start of fishing effort, and (7) economic effects of establishing of the target groundfish industry.

The final rule establishing the final 1999 groundfish and PSC specifications (64 FR 12094, March 11, 1999) summarizes Council findings with respect to each of the FMP considerations set forth here. At this time, the Council's findings are unchanged from those set forth in 1999. Pacific halibut PSC limits, and apportionments thereof, are presented in Table 4. Regulations at § 679.21(d)(5)(iii) specify that any overages or shortfalls in a seasonal apportionment of a PSC limit will be deducted from or added to the next respective seasonal apportionment within the 2000 season.

TABLE 4.—PROPOSED 2000 PACIFIC HALIBUT PSC LIMITS, ALLOWANCES, AND APPORTIONMENTS.

[The Pacific halibut PSC limit for hook-and-line gear would be allocated to the demersal shelf rockfish (DSR) fishery in the SE Outside District and other fisheries. The hook-and-line sablefish fishery is exempt from halibut PSC limits. Values are in mt]

Trawl gear		Hook-and-line gear			
		Other than DSR		DSR	
Dates	Amount	Dates	Amount	Dates	Amount
Jan 1–Mar 31	600 (30%)	Jan 1-May 17	250 (86%)	Jan 1-Dec 31	10 (100%)
Apr 1-Jul 3	400 (20%)	May 18-Aug 31	15 (5%)		
Jul 4-Sep 30	600 (30%)	Sep 1-Dec 31	25 (9%)		
Oct 1-Dec 31	400 (20%)				
Total	2,000 (100%)		290 (100%)		10 (100%)

Regulations at § 679.21(d)(3)(iii) authorize the apportionment of the trawl halibut PSC limit to a deep-water species fishery (comprising sablefish, rockfish, deep-water flatfish, rex sole, and arrowtooth flounder) and a shallow-water species fishery (comprising pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and ''other species''). The proposed apportionment for these two fishery complexes is presented in Table 5.

TABLE 5. PROPOSED 2000 APPORTIONMENT OF PACIFIC HALIBUT PSC TRAWL LIMITS BETWEEN THE DEEP-WATER SPECIES COMPLEX AND THE SHALLOW-WATER SPECIES COMPLEX.

[Values are in metric tons.]

Season	Shallow water	Deep water	Total
January 20–March 31	500	100	600
April 1–July 3	100	300	400
July 4–September 30	200	400	600
Subtotal.			
January 20–September 30	800	800	1,600
October 1–December 31			400
Total			2,000

NOTE: Pacific halibut PSC is not apportioned between shallow-water and deep-water categories from October 1 through December 31.

The Council may recommend, or NMFS may make, some changes in the seasonal, gear type, and fishing-complex apportionments of halibut PSC limits for the final 2000 harvest specifications. NMFS considers the following types of information in setting halibut PSC limits as presented by, and summarized from, the preliminary 2000 SAFE Report, or from public comment and testimony.

1. Estimated Halibut Bycatch in Prior Years

The best available information on estimated halibut bycatch is available from data collected by observers during 1999. The calculated halibut bycatch mortality by trawl, hook-and-line, and pot gear through October 16, 1999, is 2,115 mt, 343 mt, and 44 mt, respectively, for a total halibut mortality of 2,502 mt.

Halibut bycatch restrictions seasonally constrained trawl gear fisheries during all quarters of the 1999 fishing year. Trawling for the deep-water fishery complex was closed for the first quarter on March 24 (64 FR 14840, March 29, 1999), for the second quarter on April 25 (64 FR 22815, April 28, 1999), for the third quarter on July 21 (64 FR 40293, July 26, 1999), and for the fourth quarter on October 16, 1999 (64 FR 56473, October 20, 1999). The

shallow-water fishery complex was closed for the first quarter on March 20 (64 FR 14155, March 24, 1999), for the second quarter on April 1 (64 FR 16654, April 6, 1999), for the third quarter on July 4 (64 FR 35080, June 30, 1999), and for the fourth quarter on October 16, 1999 (64 FR 56473, October 20, 1999). The use of hook-and-line gear targeting groundfish other than sablefish and DSR was closed for the first trimester on April 24 (64 FR 22814, April 28, 1999), for the second trimester on May 18 (64 FR 27476, May 20, 1999), and for the third trimester on September 1 (64 FR 46317, August 25, 1999). The amount of groundfish that might have been harvested if halibut had not been seasonally limiting in 1999 is unknown. However, lacking market incentives, some amounts of groundfish will not be harvested, regardless of halibut PSC bycatch availability.

2. Expected Changes in Groundfish Stocks

The proposed 2000 ABC amounts for the species or species groups are unchanged from 1999 amounts.

3. Expected Changes in Groundfish Catch

The total of the proposed 2000 TAC amounts for the GOA is 306,535 mt, which represents 100 percent of the sum of TAC amounts for 1999 (306,535 mt).

4. Current Estimates of Halibut Biomass and Stock Condition

The most recent information on halibut biomass and stock condition may be found in the final SAFE report for 1999, dated November 1998. New information will be incorporated in the final SAFE report for 2000.

The International Pacific Halibut Commission (IPHC) has added the following information to the preliminary SAFE report for 2000, dated September 1999: (1) Halibut viability information collected by observers in 1998, (2) discard mortality rates (DMRs) have been estimated for the 1998 groundfish fisheries, and (3) DMR recommendations for year 2000 halibut bycatch monitoring.

5. Potential Impacts of Expected Fishing for Groundfish on Halibut Stocks and U.S. Halibut Fisheries

The allowable commercial catch of halibut will be adjusted to account for the overall halibut PSC mortality limit established for groundfish fisheries. The 2000 groundfish fisheries are expected to use the entire proposed halibut PSC limit of 2,300 mt. The allowable directed commercial catch is determined by accounting for the recreational catch, waste, and bycatch mortality and then providing the remainder to the directed fishery. Groundfish fishing is not expected to adversely affect the halibut stocks.

6. Methods Available for, and Costs of, Reducing Halibut Bycatch in Groundfish Fisheries

Methods available for reducing halibut bycatch include: (1) Reducing halibut bycatch rates through the Vessel Incentive Program; (2) modifications to gear; (3) changes in groundfish fishing seasons; (4) individual transferable quota programs; and (5) time/area closures.

Reductions in groundfish TAC amounts provide no incentive for fishermen to reduce bycatch rates. Costs that would be imposed on fishermen as a result of reducing TAC amounts depend on the species and amounts of groundfish foregone.

Trawl vessels carrying observers for purposes of complying with observer coverage requirements (50 CFR 679.50) are subject to the Vessel Incentive Program. This program encourages trawl fishermen to avoid high halibut bycatch rates while conducting groundfish fisheries by specifying bycatch rate standards for various target fisheries.

Current regulations (§ 679.24(b)(1)(ii)) specify requirements for tunnel openings for groundfish pots to reduce halibut bycatch. As a result, low bycatch and mortality rates of halibut in pot fisheries have justified exempting pot gear from PSC limits.

The regulations also define pelagic trawl gear in a manner intended to reduce bycatch of halibut by displacing fishing effort off the bottom of the sea floor when certain halibut bycatch levels are reached during the fishing year. The definition provides standards for physical conformation (§ 679.2, see authorized fishing gear) and performance of the trawl gear in terms of crab bycatch (§ 679.7(a)(14)). Furthermore, all hook-and-line vessel operators are required to employ careful release measures when handling halibut bycatch (§ 679.7(a)(13)). These measures are intended to reduce handling mortality, to increase the amount of groundfish harvested under the available halibut mortality bycatch limits, and to possibly lower overall halibut bycatch mortality in groundfish fisheries.

The sablefish/halibut IFQ program (implemented in 1995) was intended, in part, to reduce the halibut discard mortality in the sablefish fishery.

NMFS and the Council will review the methods available for reducing halibut bycatch listed here to determine their effectiveness, and will initiate changes, as necessary, in response to this review or to public testimony and comment.

Consistent with the goals and objectives of the FMP to reduce halibut bycatch while providing an opportunity to harvest the groundfish OY, NMFS proposes the assignments of 2,000 mt and 300 mt of halibut PSC limits to trawl and hook-and-line gear, respectively. While these limits would reduce the harvest quota for commercial halibut fishermen, NMFS has determined that they would not result in unfair allocation to any particular user group. NMFS recognizes that some halibut bycatch will occur in the groundfish fishery, but the Vessel Incentive Program, required modifications to gear, and implementation of the halibut/sablefish IFQ program are intended to reduce adverse impacts on halibut fishermen while promoting the opportunity to achieve the OY from the groundfish fishery.

Halibut Discard Mortality Rates

The Council recommended that the assumed recommended halibut mortality rates developed by staff of the IPHC for the 1999 GOA groundfish fisheries be adopted for purposes of monitoring halibut bycatch allowances established for the 2000 GOA groundfish fisheries. The justification for these mortality rates is discussed in the final SAFE report dated November 1998. Most of the IPHC's assumed mortality rates were based on an average of discard mortality rates determined from NMFS-observer data collected during 1997 and 1998. The proposed mortality rates listed in Table 6 are subject to change pending the results of an updated analysis on halibut mortality rates in the groundfish fisheries that IPHC staff are scheduled to present to the Council at its meeting in December 1999.

TABLE 6.—PROPOSED 2000 ASSUMED PACIFIC HALIBUT MORTALITY RATES FOR VESSELS FISHING IN THE GULF OF ALASKA

[Listed values are percent of halibut bycatch assumed to be dead.]

Gear and target	Mortality rate
Hook-and-Line:	
Pacific cod	16
Rockfish	9
Other species	16
Trawl:	
Midwater pollock	76
Rockfish	64
Shallow-water flatfish	71

TABLE 6.—PROPOSED 2000 ASSUMED PACIFIC HALIBUT MORTALITY RATES FOR VESSELS FISHING IN THE GULF OF ALASKA—Continued

[Listed values are percent of halibut bycatch assumed to be dead.]

Gear and target	Mortality rate
Pacific cod	66
Deep-water flatfish	66
Flathead sole:	
Catcher vessels	58
Catcher/processing vessels	74
Rex sole	55
Bottom pollock	73
Atka mackerel	57
Sablefish	71
Other species	66
Pot:	
Pacific cod	6
Other species	6

Classification

This action is authorized under 50 CFR 679.20 and is exempt from review under E.O. 12866.

Pursuant to section 7 of the Endangered Species Act, NMFS has completed a consultation on the effects of the 1999 to 2002 pollock and Atka mackerel fisheries on listed species, including the Steller sea lion, and designated critical habitat. The Biological Opinion prepared for this consultation, dated December 3, 1998, concluded that the Atka mackerel fisheries in the BSAI are not likely to jeopardize the continued existence of Steller sea lions or adversely modify their designated critical habitat. However, the Biological Opinion concluded that the pollock fisheries in the BSAI and the GOA would cause jeopardy and adverse modification.

NMFS is developing a proposed rule to permanently implement RPAs to avoid the likelihood that the pollock fisheries off Alaska will jeopardize the continued existence of the western population of Steller sea lions or adversely modify its critical habitat. Final regulations must be effective prior to the start of the BSAI and GOA pollock fisheries on January 20, 2000, or NMFS will be obligated under the Endangered Species Act to close all fishing for pollock until such measures can be implemented.

NMFS must also complete a consultation on the effects of the 2000 BSAI groundfish fisheries on listed species, including the Steller sea lion and salmon, and on designated critical habitat. These consultations will be completed in December 1999 before the start of the 2000 groundfish fishery. These consultations cannot be completed until new fishery information is available in late November.

NMFS prepared a Draft EA/IRFA that describes the impact these proposed specifications, if adopted, may have on small entities. The preferred alternative would allow the GOA groundfish fisheries to continue under final specifications set at 1999 levels until the TAC is harvested or until the fishery is closed due to attainment of a PSC limit, or for other management reasons. Under the preferred alternative, the 2000 TACs would be based on the most recent scientific information as reviewed by the Plan Team, SSC, AP, and Council and that includes public testimony and comment from the September Plan Team and October Council meetings. The preferred alternative also achieves optimum yield while preventing overfishing. Small entities would receive the maximum benefits under this alternative, in that they would be able to harvest target species and species groups at the highest available level based on stock status and ecosystem concerns. This proposed rule would apply to all vessels harvesting groundfish in the GOA. In 1998, 1,239 vessels caught groundfish in the GOA. NMFS has no information to accurately determine which of these vessels represent ''small businesses'' for IRFA purposes. No reporting requirements exist with this proposed action. NMFS is not aware of any other Federal rules which duplicate, overlap or conflict with the proposed specifications. The proposed rule would affect these vessels by authorizing fishing and establishing harvest limits. The amounts proposed are the same as last year's.

The establishment of differing compliance or reporting requirements or timetables, the use of performance rather than design standards, or exempting affected small entities from any part of this action would not be appropriate because of the nature of this action.

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

Dated: December 8, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–32235 Filed 12–10–99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991207320–9320–01; I.D. 111899B]

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands; Proposed 2000 Harvest Specifications for Groundfish

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

ACTION: Proposed 2000 specifications for groundfish and associated management measures; apportionment of reserves; request for comments.

SUMMARY: NMFS proposes 2000 harvest specifications, prohibited species bycatch allowances, and associated management measures for the groundfish fishery of the Bering Sea and Aleutian Islands Area (BSAI). This action is necessary to establish harvest limits and associated management measures for groundfish during the 2000 fishing year and to accomplish the goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Management Area (FMP). The intended effect of this action is to conserve and manage the groundfish resources in the BSAI and to provide an opportunity for public participation in the annual groundfish specification process.

DATES: Comments must be received by January 12, 2000.

ADDRESSES: Comments may be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel or delivered to the Federal Building, 709 West 9th Street, Juneau, AK.

Copies of the draft Environmental Assessment/Initial Regulatory Flexibility Analysis (EA/IRFA) prepared for this action and the Preliminary 2000 Stock Assessment and Fishery Evaluation (SAFE) report, dated September 1999, are available from the North Pacific Fishery Management Council, West 4th Avenue, Suite 306, Anchorage, AK 99510–2252 (907–271–2809).

FOR FURTHER INFORMATION CONTACT: Shane Capron, 907–586–7228 or shane.capron@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background for the 2000 Proposed Harvest Specifications

Federal regulations at 50 CFR part 679 that implement the FMP govern the groundfish fisheries in the BSAI. The Council prepared the FMP and NMFS approved it under the Magnuson-Stevens Fishery Conservation and Management Act. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify annually the total allowable catch (TAC) for each target species and for the ''other species'' category, the sum of which must be within the optimum yield range of 1.4 million to 2.0 million metric tons (mt) (§ 679.20(a)(1)(i)). Regulations under § 679.20(c)(1) further require NMFS to solicit public comment on proposed annual TACs, apportionments thereof, and prohibited species catch (PSC) allowances and to publish proposed specifications in the **Federal Register**. The proposed specifications set forth in Tables 1 through 7 of this action satisfy these requirements. For 2000, the proposed sum of TACs is 2 million mt.

Under § 679.20(c)(3), NMFS will publish the final annual specifications for 2000, after (1) considering comments received within the comment period (see **DATES**), (2) consulting with the Council at its next meeting beginning December 6, 1999, and (3) considering new information presented in the final EA/SAFE and in the section 7 consultation prepared for the 2000 groundfish fisheries.

With some exceptions, regulations at § 679.20(c)(2)(ii) provide that interim specifications except for pollock and the hook and line allocation of sablefish and Atka mackerel become available at 0001 hours Alaska local time (A.l.t.), January 1, and remain in effect until superseded by the final specifications. The regulations provide that the interim specifications will be established as one-fourth of each proposed initial TAC (ITAC) amount and apportionment thereof, one-fourth of each Community Development Quota (CDQ) reserve established under § 679.20(b)(1)(iii), and one-fourth of each proposed PSC allowance established under § 679.21. The regulations specify that the interim specification of pollock and Atka mackerel are equal to the first seasonal allowances for those species. Regulations at § 679.20(c)(2)(ii) do not provide for an interim specification for either the hook-and-line and pot gear sablefish CDQ reserve or for sablefish managed under the Individual Fishing Quota (IFQ) program. NMFS will publish interim specifications for the 2000 fishing year. No fishing is authorized before NMFS files interim specifications with the Office of the Federal Register.

Other Rules Affecting the 2000 Specifications

NMFS intends to initiate rulemaking that will affect the pollock fisheries. This rulemaking includes (1) an FMP amendment to implement the American Fisheries Act as contained within the Omnibus Appropriations Bill for FY 99, Pub. L. No. 105–277 (AFA), and (2) a regulatory amendment to implement the reasonable and prudent alternatives to avoid jeopardizing the continued existence of the endangered western population of Steller sea lions or adversely modifying its critical habitat. Each of these rules would affect the allocation and apportionment of the pollock TAC. These proposed specifications propose the pollock TAC amounts that reflect the general allocative scheme as defined by the AFA itself, but do not specify apportionments of that TAC. Apportionments will be addressed in each of the proposed rules individually and in the final 2000 specifications will be effective prior to the start of the pollock fishery on January 20, 2000.

Proposed Acceptable Biological Catch (ABC) and TAC Specifications

The proposed ABC levels are based on the best available scientific information, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods used to calculate stock biomass. The FMP specifies the formulas to be used in computing ABCs and overfishing levels. The formulas applicable to a particular stock or stock complex is determined by the level of reliable information available to fishery scientists and is based on a successive series of six levels, or tiers.

The Bering Sea Groundfish Plan Team (Plan Team) acknowledged that for purposes of the proposed 2000 overfishing levels and ABC amounts, the best information currently available is set forth in the final SAFE report for the 1999 BSAI groundfish fisheries dated November 1998. The Plan Team further acknowledged that information on the status of stocks will be updated with the 1999 survey results and reconsidered by the Plan Team at its November 1999 meeting.

At its October 1999 meeting, the Scientific and Statistical Committee (SSC), Advisory Panel (AP), and Council reviewed the Plan Team's preliminary recommendations to roll over 1999 ABC, overfishing, and TAC amounts and to reconsider these amounts at the December 1999 Council meeting after new status of stocks information can be incorporated by the Plan Team into a final SAFE report for the 2000 BSAI groundfish fishery. The SSC, AP, and Council concurred with the Plan Team's recommendations. None of the Council's proposed TACs for 2000 exceed the proposed ABC for any species category. Therefore, NMFS finds that the proposed TACs are consistent with the best available information on the biological condition of the groundfish stocks.

The plan team's recommendation to roll over the 1999 groundfish harvest specifications for this action did not take into account the overfishing definitions approved in the BSAI and GOA FMP Amendments 56/56. Those overfishing definitions were used in August 1999 to reanalyze the status of the groundfish stocks in the BSAI and GOA. That analysis is presented draft EA prepared for this action. The overfishing levels in these proposed specifications reflect that analysis.

Table 1 lists the proposed 2000 overfishing levels, ABC amounts, and TAC amounts for groundfish in the BSAI.

TABLE 1.—PROPOSED 2000 ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), CDQ RESERVE ALLOCATION, AND OVERFISHING LEVELS OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREA (BSAI)[1]

Species	Area	Overfishing level	ABC	TAC	ITAC[2]	CDQ reserve[3]
Pollock[4]	Bering Sea (BS)	2,210,000	992,000	992,000	892,800	99,200
	Aleutian Islands (AI)	31,700	23,800	2,000	1,800	200
	Bogoslof District	115,000	15,300	1,000	900	100
Pacific cod	BSAI	215,000	177,000	177,000	150,450	13,275

TABLE 1.—PROPOSED 2000 ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), CDQ RESERVE ALLOCATION, AND OVERFISHING LEVELS OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREA (BSAI)[1]—Continued

Species	Area	Overfishing level	ABC	TAC	ITAC [2]	CDQ reserve [3]
Sablefish [5]	BS	1,600	1,340	1,340	569	184
	AI	2,200	1,860	1,380	293	232
Atka mackerel	Total	126,000	73,300	66,400	56,440	4,980
	Western AI		30,700	27,000	22,950	2,025
	Central AI		25,600	22,400	19,040	1,680
	Eastern AI/BS		17,000	17,000	14,450	1,275
Yellowfin sole	BSAI	251,000	212,000	207,980	176,783	15,598
Rock sole	BSAI	367,000	309,000	120,000	102,000	9,000
Greenland turbot	Total	21,000	14,200	9,000	7,651	674
	BS		9,514	6,030	5,126	452
	AI		4,686	2,970	2,525	222
Arrowtooth flounder	BSAI	170,000	140,000	134,354	114,201	10,076
Flathead sole	BSAI	95,600	77,300	77,300	65,705	5,797
Other flatfish [6]	BSAI	197,000	154,000	154,000	130,900	11,550
Pacific ocean perch	BS	2,300	1,900	1,400	1,190	105
	AI Total	16,200	13,500	13,500	11,476	1,011
	Western AI		6,220	6,220	5,287	466
	Central AI		3,850	3,850	3,273	288
	Eastern AI		3,430	3,430	2,916	257
Other red rockfish [7]	BS	356	267	267	227	20
Sharpchin/Northern	AI	5,640	4,230	4,230	3,596	317
Shortraker/rougheye	AI	1,290	965	965	821	72
Other rockfish [8]	BS	492	369	369	314	27
	AI	913	685	685	583	51
Squid	BSAI	2,620	1,970	1,970	1,675	147
Other species [9]	BSAI	129,000	32,860	32,860	27,931	2,464
Total		3,961,911	2,247,846	2,000,000	1,748,305	175,080

[1] Amounts are in metric tons. These amounts apply to the entire Bering Sea (BS) and Aleutian Islands (AI) Subarea unless otherwise specified. With the exception of pollock, and for the purpose of these specifications, the Bering Sea subarea includes the Bogoslof District.

[2] Except for pollock and the portion of the sablefish TAC allocated to hook-and-line and pot gear, 15 percent of each TAC is put into a reserve. The ITAC for each species is the remainder of the TAC after the subtraction of these reserves.

[3] Except for pollock and the hook-and-line or pot gear allocation of sablefish, one-half of the amount of the TACs placed in reserve, or 7.5 percent of the TACs, is designated as a CDQ reserve for use by CDQ participants (see § 679.31(a)(1)). Fifteen percent of the groundfish CDQ reserve established for arrowtooth flounder and ''other species'' is allocated to a non-specific CDQ reserve found at § 679.31(g).

[4] For the 2000 pollock fishery, all pollock amounts and apportionments thereof will remain reserved until those measures under the AFA and required by the biological opinion for Steller sea lions to avoid jeopardy and adverse modification to critical habitat can be implemented. NMFS anticipates that these rules will be finalized before January 20, 2000. Ten percent of the pollock TAC is allocated to the pollock CDQ fishery under paragraph 206(a) of the AFA. The pollock ITAC is equal to the TAC minus the CDQ allocation. Under authority of the AFA, NMFS is allocating 5 percent of the pollock ITAC as an incidental catch allowance (see section 206(b) of the AFA). NMFS, under regulations at § 679.20(a)(5)(i)(B), allocates zero mt of pollock to nonpelagic trawl gear. This action is based on Council intent to prohibit the use of nonpelagic trawl gear in 2000 because of concerns of unnecessary incidental catch with bottom trawl gear in the pollock fishery.

[5] Regulations at § 679.20(b)(1) do not provide for the establishment of an ITAC for the hook-and-line and pot gear allocation for sablefish. The ITAC for sablefish reflected in Table 1 is for trawl gear only. Twenty percent of the sablefish TAC allocated to hook-and-line gear or pot gear is reserved for use by CDQ participants (see § 679.31(c)).

[6] ''Other flatfish'' includes all flatfish species, except for Pacific halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, and arrowtooth flounder.

[7] ''Other red rockfish'' includes shortraker, rougheye, sharpchin, and northern rockfish.

[8] ''Other rockfish'' includes all *Sebastes* and *Sebastolobus* species except for Pacific ocean perch, sharpchin, northern, shortraker, and rougheye rockfish.

[9] ''Other species'' includes sculpins, sharks, skates and octopus. Forage fish, as defined at § 679.2 are not included in the ''other species'' category.

Reserves and the Incidental Catch Allowance (ICA) for Pollock

Regulations at § 679.20(b)(1)(i) require that 15 percent of the TAC for each target species or species group, except for the hook-and-line and pot gear allocation of sablefish, be placed in a non-specified reserve. The AFA supersedes this provision for pollock by requiring that the 2000 TAC for this species be fully allocated among the CDQ program, the ICA, inshore, catcher/processor, and mothership directed fishery allowances.

Regulations at § 679.20(b)(1)(iii) require that one-half of each TAC amount placed in the non-specified reserve be allocated to the groundfish CDQ reserve and that 20 percent of the hook-and-line and pot gear allocation of sablefish be allocated to the fixed gear sablefish CDQ reserve. Section 206(a) of the AFA requires that 10 percent of the pollock TAC be allocated to the pollock CDQ reserve. With the exception of the hook-and-line and pot gear sablefish CDQ reserve, the regulations do not further apportion the CDQ reserves by gear. Regulations at § 679.21(e)(1)(i) also require that 7.5 percent of each PSC limit, with the exception of herring, be withheld as a prohibited species quota (PSQ) reserve for the CDQ fisheries. Regulations governing the management of the CDQ and PSQ reserves are set forth at §§ 679.30 and 679.31.

The regulations do not designate the remainder of the non-specified reserve by species or species group, and any amount of the reserve may be reapportioned to a target species or to the ''other species'' category during the

year, providing that such reapportionments do not result in overfishing.

Under section 206(b) of the AFA, NMFS proposes a pollock ICA of 5 percent of the pollock TAC after subtraction of the 10-percent CDQ reserve. This allowance is based on an examination of the incidental catch of pollock in non-pollock target fisheries from 1996 through 1999. During this 4-year period, the incidental catch of pollock ranged from a low of 3 percent in 1998 to a high of about 6 percent in 1997, with a 4-year average of 5 percent. Because these bycatch percentages are contingent on the relative amounts of groundfish TACs, NMFS will be more able to assess the ICA amount when the Council makes final ABC and TAC amount recommendations in December.

Apportionment of Pollock TAC to Vessels Using Nonpelagic Trawl Gear

Regulations at § 679.20(a)(5)(i)(B) authorize NMFS, in consultation with the Council, to limit the amount of pollock that may be taken in the directed fishery for pollock using nonpelagic trawl gear. In June 1998, the Council adopted management measures that, if approved by NMFS, would prohibit the use of nonpelagic trawl gear in the directed fishery for pollock and reduce specified prohibited species bycatch limits by amounts equal to anticipated savings in bycatch or bycatch mortality that would be expected from this prohibition. These measures could be effective by mid-2000. Therefore, NMFS proposes to allocate zero mt of pollock to non-pelagic trawl gear. A zero allocation would be necessary to reduce bycatch of PSC and incidental catch of other groundfish species in the 2000 pollock fishery consistent with the Council's intent for this fishery.

Pollock Allocations Under the AFA

Section 206(a) of the AFA requires that 10 percent of the BSAI pollock TAC be allocated as a directed fishing allowance to the CDQ program. The remainder of the BSAI pollock TAC, after the subtraction of an allowance for the incidental catch of pollock by vessels, including CDQ vessels, harvesting other groundfish species, must be allocated as follows: 50 percent to catcher vessels harvesting pollock for processing by the inshore component, 40 percent to catcher/processors and catcher vessels harvesting pollock for processing by catcher/processors in the offshore component, and 10 percent to catcher vessels harvesting pollock for processing by motherships in the offshore component. These amounts are listed in Table 2.

The AFA also contains several specific requirements concerning pollock and pollock allocations. First, paragraph 210(c) of the AFA requires that not less than 8.5 percent of the pollock allocated to vessels for processing by offshore catcher/processors be available for harvest by offshore catcher vessels listed in section 208(b) harvesting pollock for processing by offshore catcher/processors listed in paragraph 208(e). Second, paragraph 208(e)(21) of the AFA specifies that catcher/processors qualifying to fish for pollock under this paragraph are prohibited from harvesting in the aggregate a total of more than one-half of a percent (0.5) of the pollock allocated to vessels for processing by offshore catcher/processors. Other provisions of the AFA, including inshore pollock cooperative allocations, AFA catcher vessel harvest limitations, and excessive harvest and processing shares will be described in the proposed rule to implement the AFA. After issuance of a final rule to implement the AFA, the 2000 specifications would be amended accordingly. Table 2 lists the proposed 2000 allocations of pollock TAC as described by the AFA, but excludes seasonal apportionments, critical habitat limitations, and protections for other fisheries for AFA listed catcher processors. These apportionments, limitations, and protections will be described in the proposed rule to implement the RPAs.

Implementation of Steller Sea Lion Conservation Measures

NMFS is developing a separate proposed rule that, if approved, would permanently implement reasonable and prudent alternatives (RPAs) to avoid the likelihood that the pollock fisheries off Alaska will jeopardize the continued existence of the western population of Steller sea lions or adversely modify its critical habitat. If approved, this rule would implement three types of management measures for the pollock fisheries of the BSAI and GOA: (1) Measures to temporally disperse fishing effort, (2) measures to spatially disperse fishing effort, and (3) measures to provide full protection from competition with pollock fisheries for prey in waters immediately adjacent to rookeries and important haulouts. Emergency measures which implemented RPAs for 1999 are in effect until December 31, 1999 (July 21, 1999, 64 FR 39087). Final measures must be effective prior to the start of the BSAI and GOA pollock fisheries on January 20, 2000, or NMFS will be obligated under the Endangered Species Act to close all fishing for pollock until such measures can be implemented.

NMFS is reserving all allocations and apportionments of the 2000 pollock TAC for the BSAI until the Steller sea lion conservation measures can be implemented as described above.

TABLE 2.—PROPOSED ALLOCATIONS OF THE POLLOCK TAC AND DIRECTED FISHING ALLOWANCE TO THE INSHORE, CATCHER/PROCESSOR, MOTHERSHIP, AND CDQ COMPONENTS [1]

Sector	Proposed 2000 TAC (mt)	Directed fishing allowance
Bering Sea Subarea	992,000	
CDQ	99,200	
ICA [2]	44,640	
Inshore	424,080	424,080
Offshore C/Ps [3]	339,264	339,264
Catch by C/Ps	310,427	
Catch by CVs	28,837	
Sec. 208(e)(21) [4]	1,696	
Mothership	84,816	84,816
Aleutian Islands ICA [5]	2,000	

TABLE 2.—PROPOSED ALLOCATIONS OF THE POLLOCK TAC AND DIRECTED FISHING ALLOWANCE TO THE INSHORE, CATCHER/PROCESSOR, MOTHERSHIP, AND CDQ COMPONENTS [1]—Continued

Sector	Proposed 2000 TAC (mt)	Directed fishing allowance
Bogoslof District ICA [5]	1,000	

[1] After subtraction for the CDQ reserve and the incidental catch allowance, the pollock TAC is allocated as follows: inshore component—50 percent, catcher/processor component—40 percent, and mothership component—10 percent. Under paragraph 206(a) of the AFA, the CDQ reserve for pollock is 10 percent. NMFS, under regulations at § 679.20(a)(5)(i)(B), allocates zero mt of pollock to nonpelagic trawl gear. This action is based on Council intent to prohibit the use of nonpelagic trawl gear in 2000 because of concerns of unnecessary incidental catch with bottom trawl gear in the pollock fishery.

[2] The proposed pollock incidental catch allowance for the BS Subarea is 5 percent of the TAC after subtraction of the CDQ reserve

[3] Section 210(c) of the AFA requires that not less than 8.5 percent of the directed fishing allowance allocated to listed catcher/processors (C/Ps) shall be available for harvest only by eligible catcher vessels (CVs) delivering to listed catcher/processors.

[4] The AFA requires that vessels described in section 208(e)(21) be prohibited from exceeding a harvest amount of one-half of one percent of the directed fishing allowance allocated to vessels for processing by listed catcher/processors.

[5] Consistent with the 1999 harvest specifications and the revised RPAs, the Aleutian Islands Subarea and the Bogoslof District would be closed to directed fishing for pollock. The amounts specified are for incidental catch amounts only, and are not apportioned by season or sector.

Allocation of the Atka mackerel TAC

Due to concerns about the potential impact of the Atka mackerel fishery on Steller sea lions and their critical habitat, NMFS issued regulations that implement temporal and spatial dispersion of fishing effort in the Atka mackerel fisheries. Regulations at 50 CFR 679.20(a)(8)(ii) apportion the Atka mackerel ITAC into two equal seasonal allowances. The first allowance is made available for directed fishing from January 1 to April 15 (''A'' season), and the second seasonal allowance is made available from September 1 to November 1 (''B'' season) (Table 3). According to § 679.22(a)(8), fishing with trawl gear in areas defined as Steller sea lion critical habitat (see Figure 4 of 50 CFR part 226) within the Western and Central Aleutian Islands subareas, is prohibited during each Atka mackerel season when specified percentages of the TAC are harvested within designated critical habitat areas. In 2000, the specified catch percentage within critical habitat is 57 percent of each seasonal allowance for the Western Aleutian Islands and 67 percent of each seasonal allowance for the Central Aleutian Islands (§ 679.22(a)(8)(iii)(B)). A Steller sea lion critical habitat closure to fishing with trawl gear within a district will remain in effect until NMFS closes Atka mackerel to directed fishing within the same district. The regulations do not establish critical habitat closures based on Atka mackerel catch percentages inside critical habitat areas for the Eastern Aleutian Islands and Bering Sea subarea.

Under § 679.20(a)(8)(i), up to 2 percent of the Eastern Aleutian Islands district and the Bering Sea subarea Atka mackerel ITAC may be allocated to the jig gear fleet. The Council determines the amount of this allocation annually, based on several criteria including the anticipated harvest capacity of the jig gear fleet. In October 1999, the Council recommended that 1 percent of the Atka mackerel ITAC in the Eastern Aleutian Islands district/Bering Sea subarea be allocated to the jig gear fleet in 2000. Based on an ITAC of 14,450 mt, the jig gear allocation would be 144 mt.

TABLE 3.—PROPOSED 2000 SEASONAL AND SPATIAL APPORTIONMENTS, GEAR SHARES, AND CDQ RESERVE OF THE BSAI ATKA MACKEREL TAC [1, 2]

Subarea and component	TAC	CDQ reserve	ITAC	Seasonal apportionment [3]			
				A Season [4]		B Season [5]	
				Total	CH Limit [6]	Total	CH Limit [6]
Western Aleutian Islands	27,000	2,025	22,950	11,475	6,541	11,475	6,541
Central Aleutian Islands	22,400	1,680	19,040	9,520	6,378	9,520	6,378
Eastern AI/BS subarea [7]	17,000	1,275	14,450				
Jig (1 %) [8]			144				
Other gear (99%)			14,306	7,153		7,153	
Total	66,400	4,980	56,440	28,148		28,148	

[1] Amounts are in metric tons.

[2] A final rule implementing changes to the Atka mackerel fishery was published in the FEDERAL REGISTER on January 22, 1999 (64 FR 3446).

[3] The seasonal apportionment of Atka mackerel is 50 percent in the A season and 50 percent in the B season.

[4] January 1 through April 15.

[5] September 1 through November 1.

[6] Critical habitat (CH) allowance refers to the amount of each seasonal allowance that is available for fishing inside critical habitat (Figure 4 of 50 CFR part 226). In 2000, the percentage of each seasonal allowance available for fishing inside critical habitat is 57 percent in the Western AI and 67 percent in the Central AI. When these critical habitat allowances are reached, critical habitat areas will be closed to trawling until NMFS closes Atka mackerel to directed fishing within the same district.

[7] Eastern Aleutian Islands District and Bering Sea subarea.

[8] Regulations at § 679.20 (a)(8) require that up to 2 percent of the Eastern AI area ITAC be allocated to the Jig gear fleet. The amount of this allocation is 1 percent and was determined by the Council based on anticipated harvest capacity of the jig gear fleet. The jig gear allocation is not apportioned by season.

Allocation of the Pacific Cod TAC

Under § 679.20(a)(7), 2 percent of the Pacific cod ITAC is allocated to vessels using jig gear, 51 percent to vessels using hook-and-line or pot gear, and 47 percent to vessels using trawl gear. Under § 679.20(a)(7)(b), the portion of the Pacific cod TAC allocated to trawl gear is further allocated 50 percent to

catcher vessels and 50 percent to catcher/processors. In October 1999, the Council proposed seasonal allowances for the portion of the Pacific cod TAC allocated to the hook-and-line and pot gear fisheries. The seasonal allowances are authorized under § 679.20(a)(7)(iv) and are based on the criteria set forth at § 679.20(a)(7)(iv)(B). They are intended to provide for the harvest of Pacific cod when flesh quality and market conditions are optimum and when Pacific halibut bycatch rates are low. Table 4 lists the proposed 2000 allocations and seasonal apportionments of the Pacific cod ITAC. Consistent with § 679.20(a)(7)(iv)(C), NMFS and the Council propose that any portion of the first seasonal allowance of the hook-and-line and pot gear allocation that is not harvested by the end of the first season become available on September 1, the beginning of the third season.

TABLE 4.—PROPOSED 2000 GEAR SHARES AND SEASONAL APPORTIONMENTS OF THE BSAI PACIFIC COD TAC

Gear	Percent ITAC	Share ITAC (mt)	Seasonal apportionment	
			Date	Amount (mt)
Jig	2	3,010	January 1–December 31	3,010
Hook-&-line/pot gear	51	76,730	January 1–April 30 [1]	55,135
			May 1–August 31	7,811
			September 1–December 31	13,784
Trawl gear	47	70,710	January 1–December 31	70,710
C.V. (50%)		35,355		
C/P (50%)		35,355		
Total	100	150,450		

[1] Any unused portion of the first seasonal Pacific cod allowance specified for the Pacific cod hook-and-line or pot gear fishery will be reapportioned to the third seasonal allowance.

At its October 1999 meeting, the Council also adopted an FMP amendment that would further allocate the hook-and-line and pot gear allocation among different sectors of the fixed gear fleet. If NMFS approves this amendment, the harvest specifications would be revised accordingly.

Allocation of the Shortraker and Rougheye Rockfish TAC

Under § 679.20(a)(9), the ITAC of shortraker rockfish and rougheye rockfish specified for the Aleutian Islands subarea is allocated 30 percent to vessels using non-trawl gear and 70 percent to vessels using trawl gear. Based on a proposed ITAC of 821 mt, the trawl allocation would be 575 mt and the non-trawl allocation would be 246 mt.

Sablefish Gear Allocation

Regulations at § 679.20(a)(4)(iii) and (iv) require that sablefish TACs for the BSAI subareas be allocated between trawl and hook-and-line or pot gear types. Gear allocations of TACs for the Bering Sea subarea are 50 percent for trawl gear and 50 percent for hook-and-line/pot gear and for the Aleutian Islands subarea, 25 percent for trawl gear, 75 percent for hook-and-line/pot gear. Regulations at § 679.20(b)(1)(iii)(B) require that 20 percent of the hook-and-line and pot gear allocation of sablefish be reserved as sablefish CDQ. Additionally, regulations at § 679.20(b)(iii)(A) require that 7.5 percent of the trawl gear allocation of sablefish (one half of the reserve) be reserved as groundfish CDQ. Gear allocations of the sablefish TAC and CDQ reserve amounts are specified in Table 5.

TABLE 5.—PROPOSED 2000 GEAR SHARES AND CDQ RESERVE OF BSAI SABLEFISH TACS

Subarea and gear	Percent of TAC	Share of TAC (mt)	ITAC (mt)	CDQ reserve (mt)
Bering Sea:				
Trawl [2]	50	670	569	50
Hook-&-line/pot gear [3]	50	670	N/A	134
Total	100	1,340	569	184
Aleutian Islands:				
Trawl [2]	25	345	293	25
Hook-&-line/pot gear [3]	75	1,035	N/A	207
Total	100	1,380	293	232

[1] Except for the sablefish hook-and-line and pot gear allocation, 15 percent of TAC is apportioned to reserve. The ITAC is the remainder of the TAC after the subtraction of these reserves.

[2] For the portion of the sablefish TAC allocated to vessels using trawl gear, one half of the reserve (7.5 percent of the specified TAC) is reserved for the multi-species CDQ program.

[3] For the portion of the sablefish TAC allocated to vessels using hook-and-line or pot gear, 20 percent of the allocated TAC is reserved for use by CDQ participants. Regulations in § 679.20(b)(1) do not provide for the establishment of an ITAC for sablefish allocated to hook-and-line or pot gear.

Allocation of Prohibited Species Catch (PSC) Limits for Halibut, Crab, and Herring

Due to the lack of new information concerning PSC limits, the Council at its October 1999 meeting recommended using the 1999 PSC amounts for 2000. The Council will reconsider these amounts in December based on recommendations by the Plan Team and the SSC. New survey and stock assessment information will be available in December 1999 in the 1999 SAFE document prepared by the Plan Team.

PSC limits for halibut are set in regulations at § 679.21(e). For the BSAI trawl fisheries, the limit is 3,775 mt mortality of Pacific halibut. For non-trawl fisheries, the limit is 900 mt mortality. PSC limits for crab and herring are specified annually based on abundance and spawning biomass.

For 2000, the proposed PSC limit of red king crab in Zone 1 for trawl vessels is 200,000 crab. Based on the criteria set out at § 679.21(e)(1)(ii), the number of mature female red king crab was estimated in 1998 to be above the threshold of 8.4 million animals, and the effective spawning biomass is estimated to be 56 million lbs (25.4 million mt) which is greater than the 55 million lb (24.95 million mt) threshold level.

The proposed 2000 *C. bairdi* PSC limit for trawl gear is 750,000 animals in Zone 1 and 1,878,000 animals in Zone 2. These limits are based on survey data from 1998, and on the criteria set out at § 679.21(e)(1)(iii). In Zone 1, *C. bairdi* abundance was estimated to be greater than 150 million and less than 270 million animals. In Zone 2, *C. bairdi* abundance was estimated to be less than 175 million animals, and, therefore, calculated at 1.2 percent of the abundance level of 156.6 million crabs, resulting in a proposed limit of 1.878 million crabs.

Under § 679.21(e)(1)(iv), the PSC limit for *C. opilio* is based on total abundance as indicated by the NMFS standard trawl survey. The *C. opilio* PSC limit is set at 0.1133 percent of the Bering Sea abundance index, with a minimum PSC of 4.5 million crab and a maximum PSC of 13 million crab. Based on the 1998 survey estimate of 3.233 billion crabs, the calculated limit would be 3,663,000 crabs. Because this limit falls below the minimum level, the proposed 2000 *C. opilio* PSC limit would be 4.5 million crabs in 2000.

Under § 679.21(e)(1)(vi), the proposed PSC limit of Pacific herring caught while conducting any trawl operation for groundfish in the BSAI is 1 percent of the annual eastern Bering Sea herring biomass. NMFS' best estimate of 2000 herring biomass is 168,512 mt. This amount was derived using 1998 survey data and an age-structured biomass projection model developed by the Alaska Department of Fish and Game (ADF&G). Therefore, the proposed herring PSC limit for 2000 is 1,685 mt.

Under § 679.21(e)(1)(i) 7.5 percent of each PSC limit specified for crab and halibut is reserved as a PSQ reserve for use by the groundfish CDQ program. Regulations at § 679.21(e)(3) require the apportionment of each trawl PSC limit into PSC bycatch allowances for seven specified fishery categories. Regulations at § 679.21(e)(4)(ii) authorize the apportionment of the non-trawl halibut PSC limit among five fishery categories. The proposed fishery bycatch allowances for the trawl and non-trawl fisheries are listed in Table 6.

Regulations at § 679.21(e)(3)(ii)(B) establish criteria under which NMFS must specify an annual red king crab bycatch limit for the Red King Crab Savings Subarea (RKCSS). The Council proposes to limit the RKCSS to 30 percent of the total red king crab allocated to the rock sole/flathead sole/ ''other flatfish'' fishery category. This proposed limit would optimize the groundfish harvest relative to red king crab bycatch.

Regulations at § 679.21(e)(4)(ii) authorize exemption of specified non-trawl fisheries from the halibut PSC limit. As in past years, the Council recommended that pot gear, jig gear, and the sablefish IFQ hook-and-line gear fishery categories be exempt from halibut bycatch restrictions because these fisheries use selective gear types that take comparatively few halibut. In 1998, total groundfish catch for the pot gear fishery in the BSAI was approximately 14,118 mt with an associated halibut bycatch mortality of about 43 mt. The 1998 groundfish jig gear fishery harvested about 192 mt of groundfish. Most vessels in the jig gear fleet are less than 60 ft (18.3 m) length overall and are exempt from observer coverage requirements. As a result, observer data are not available on halibut bycatch in the jig gear fishery. However, a negligible amount of halibut bycatch mortality is assumed because of the selective nature of this gear type and the likelihood that halibut caught with jig gear have a high survival rate when released.

As in past years, the Council recommended that the sablefish IFQ fishery be exempt from halibut bycatch restrictions because of the sablefish and halibut IFQ program (subpart D of 50 CFR part 679). The IFQ program requires legal-sized halibut to be retained by vessels using hook-and-line gear if a halibut IFQ permit holder is aboard and is holding unused halibut IFQ. This action results in less halibut discard in the fishery. In 1995, about 36 mt of halibut discard mortality was estimated for the sablefish IFQ fishery. A similar estimate for 1996 through 1999 has not been calculated, but NMFS has no information indicating that it would be significantly different.

Regulations at § 679.21(e)(5) authorize NMFS, after consultation with the Council, to establish seasonal apportionments of PSC amounts. NMFS anticipates that the Council will recommend seasonal apportionments during its December 1999 meeting; therefore, none are proposed at this time.

TABLE 6.—PROPOSED 2000 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NON-TRAWL FISHERIES

	Prohibited Species and Zone					
	Halibut mortality (mt) BSAI	Herring (mt) BSAI	Red King Crab (animals) Zone 1 [1]	C. opilio (animals) COBLZ [2]	C. bairdi (animals)	
					Zone 1 [1]	Zone 2 [1]
Trawl Fisheries						
Yellowfin sole	955	254	19,800	3,108,786	260,894	1,128,824
Rock sole/oth.flat/flat sole [3]	755	22	103,950	766,552	279,528	376,274
Turbot/sablefish/arrowtooth [4]	.....	10	.....	42,585	.....	.....
Rockfish July 4—December 31 [5]	71	8	.....	42,585	.....	7,378
Pacific cod	1,473	22	14,850	127,758	139,950	205,528

TABLE 6.—PROPOSED 2000 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NON-TRAWL FISHERIES—Continued

	Prohibited Species and Zone					
	Halibut mortality (mt) BSAI	Herring (mt) BSAI	Red King Crab (animals) Zone 1 [1]	C. opilio (animals) COBLZ [2]	C. bairdi (animals)	
					Zone 1 [1]	Zone 2 [1]
Mid-water trawl pollock [6]	.....	1,217	.....	.....	.....	.....
Pollock/Atka mackerel/other [7]	238	152	1,850	74,234	13,378	19,146
RKCSS [3]	.....	.....	44,550	.....	.....	.....
Total Trawl PSC	3,492	1,685	185,000	4,162,500	693,750	1,737,150
Non-Trawl Fisheries						
Pacific cod—Total	748					
Other non-trawl—Total	84					
Groundfish pot and jig	exempt					
Sablefish hook-and-line	exempt					
Total Non-Trawl	832					
PSQ Reserve [8]	351	.....	15,000	337,500	56,250	140,850
Grand Total	4,675	1,685	200,000	4,500,000	750,000	1,878,000

[1] Refer to § 679.2 for definitions of areas.
[2] *C. opilio* Bycatch Limitation Zone. Boundaries are defined at § 679.21 (e)(7)(iv)(B). At its October meeting the Council proposed apportioning *C. opilio* by percentage to the following fisheries: yellowfin sole 73 percent, rock sole 18 percent, turbot 1 percent, rockfish 1 percent, Pacific cod 3 percent, and pollock 4 percent.
[3] The Council at its October 1999 meeting proposed limiting red king crab for trawl fisheries within the RKCSS to 30 percent of the total allocation to the rock sole, flathead sole, and other flatfish fishery category (§ 679.21(e)(3)(ii)(B)).
[4] Greenland turbot, arrowtooth flounder, and sablefish fishery category.
[5] The Council at its October 1999 meeting proposed to apportion the rockfish PSC amounts according to the 1999 specifications, from July 4—December 31, to prevent fishing for rockfish before July 4, 2000.
[6] Halibut and crab bycatch in the midwater trawl pollock fishery is deducted from the allowances for the pollock/Atka mackerel/other species category.
[7] Pollock other than pelagic trawl pollock, Atka mackerel, and ''other species'' fishery category.
[8] With the exception of herring, 7.5 percent of each PSC limit is allocated to the multi-species CDQ program as PSQ reserve. The PSQ reserve is not allocated by fishery, gear or season.

To monitor halibut bycatch mortality allowances and apportionments, the Administrator, Alaska Region, NMFS (Regional Administrator), will use observed halibut bycatch rates, assumed mortality rates, and estimates of groundfish catch to project when a fishery's halibut bycatch mortality allowance or seasonal apportionment is reached. The Regional Administrator monitors a fishery's halibut bycatch mortality allowances using assumed mortality rates that are based on the best information available, including information contained in the annual SAFE report.

The Council proposed that the assumed halibut mortality rates developed by staff of the International Pacific Halibut Commission (IPHC) for the 1999 BSAI groundfish fisheries be adopted for purposes of monitoring halibut bycatch allowances established for 2000. The justification for these mortality rates is discussed in the final SAFE report dated November 1998. The proposed mortality rates listed in Table 7 are subject to change, pending the results of an updated analysis on halibut mortality rates in the groundfish fisheries that IPHC staff is scheduled to present to the Council at its December 1999 meeting.

TABLE 7.—PROPOSED 2000 ASSUMED PACIFIC HALIBUT MORTALITY RATES FOR THE BSAI FISHERIES

Fishery	Assumed mortality (percent)
Hook-and-line gear fisheries:	
Rockfish	12
Pacific cod	11
Greenland turbot	19
Sablefish	17
Other Species	11
Trawl gear fisheries:	
Midwater pollock	85
Non-pelagic pollock	76
Yellowfin sole	78
Rock sole	76
Flathead sole	62
Other flatfish	69
Rockfish	72
Pacific cod	69
Atka mackerel	85
Greenland turbot	73
Sablefish	23
Other species	69
Pot gear fisheries:	
Pacific cod	4

TABLE 7.—PROPOSED 2000 ASSUMED PACIFIC HALIBUT MORTALITY RATES FOR THE BSAI FISHERIES—Continued

Fishery	Assumed mortality (percent)
Other species	4

Classification

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Order 12866.

NMFS has prepared a draft EA for this action, which describes the impact of the human environment that would result from implementation of the proposed specifications. In December 1998, NMFS issued a Supplemental Environmental Impact Statement (SEIS) on the groundfish TAC specifications and PSC limits under the BSAI and Gulf of Alaska (GOA) groundfish FMPs. In July 1999, the District Court for the Western District of Washington held that the 1998 SEIS did not adequately address aspects of the BSAI and GOA FMPs. Notwithstanding the deficiencies

the court noted in the 1998 SEIS, NMFS believes that the discussion of impacts and alternatives in the 1998 SEIS is directly applicable to this proposed action, and a draft EA for the proposed 2000 harvest specifications ''tiers off'' (incorporates by reference) the 1998 SEIS.

Pursuant to section 7 of the Endangered Species Act, NMFS has completed a consultation on the effects of the 1999 to 2002 pollock and Atka mackerel fisheries on listed species, including the Steller sea lion, and designated critical habitat. The Biological Opinion prepared for this consultation, dated December 3, 1998, concluded that the Atka mackerel fisheries in the BSAI are not likely to jeopardize the continued existence of Steller sea lions or adversely modify their designated critical habitat. However, the Biological Opinion concluded that the pollock fisheries in the BSAI and the GOA would cause jeopardy and adverse modification.

NMFS is developing a proposed rule that, if approved, would permanently implement RPAs to avoid the likelihood that the pollock fisheries off Alaska will jeopardize the continued existence of the western population of Steller sea lions or adversely modify its critical habitat. Final regulations must be effective prior to the start of the BSAI and GOA pollock fisheries on January 20, 2000, or NMFS will be obligated under the Endangered Species Act to close all fishing for pollock until such measures can be implemented.

NMFS must also complete a consultation on the effects of the 2000 BSAI groundfish fisheries on listed species, including the Steller sea lion and salmon, and on designated critical habitat. These consultations will be completed in December 1999 before the start of the 2000 groundfish fishery. These consultations cannot be completed until new fishery information is available in late November.

A Biological Opinion on the BSAI hook-and-line groundfish fishery and the BSAI trawl groundfish fishery for the ESA listed short-tailed albatross was issued by the U.S. Fish and Wildlife Service in March 1999. The conclusion continued the no jeopardy determination and the incidental take statement expressing the requirement to immediately re-initiate consultations if incidental takes exceed four short-tailed albatross over 2 years' time (1999–2000).

NMFS prepared an IRFA pursuant to the Regulatory Flexibility Act (RFA) that describes the impact the proposed 2000 harvest specifications might have on small entities. A copy of this analysis is available from the Council (see **ADDRESSES**). The preferred alternative would allow the BSAI groundfish fisheries to continue under final specifications set at 1999 levels until the TAC is harvested or until the fishery is closed due to attainment of a PSC limit, or for other management reasons. Under the preferred alternative, the 2000 TACs would be based on the most recent scientific information as reviewed by the Plan Team, SSC, AP, and Council and that includes public testimony and comment from the September Plan Team and October Council meetings. The preferred alternative also achieves optimum yield while preventing overfishing. Small entities would receive the maximum benefits under this alternative, in that they will be able to harvest target species and species groups at the highest available level based on stock status and ecosystem concerns.

The six CDQ groups are comprised of 56 small governmental jurisdictions with direct involvement in groundfish CDQ fisheries that are within the RFA definition of small entities. Based on 1998 data, NMFS estimates less than 280 small entities harvest groundfish in the BSAI.

The establishment of differing compliance or reporting requirements or timetables, and the use of performance rather than design standards, or exempting affected small entities from any part of this action would not be appropriate because of the nature of this action.

This action is necessary to establish harvest limits for the BSAI groundfish fisheries for the 2000 fishing year. The groundfish fisheries in the BSAI are governed by Federal regulations at 50 CFR part 679 that require NMFS, after consultation with the Council, to publish and solicit public comments on proposed annual TACs, PSC allowances, and seasonal allowances of the TACs. No recordkeeping and reporting requirements are implemented with this final action. NMFS is not aware of any other Federal rules which duplicate, overlap or conflict with the final specifications.

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

Dated: December 8, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–32234 Filed 12–10–99; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 64, No. 238

Monday, December 13, 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

Starbucky Restoration Project; Nez Perce National Forest, Idaho County, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare an environmental impact statement.

SUMMARY: The project area is located in the Buckhorn, Santiam, Rabbit, and Center Star watersheds, along with South Fork Clearwater River face drainages, T28N, R6E, Sections 1 and 12; T28N, R7E, Sections 3–10; T29N, R6E, Section 36; T29N, R7E, Sections 23 and 25–35, Boise Meridian.

The Forest Service will prepare an environmental impact statement (EIS) to analyze and disclose the environmental effects of the project.

The primary purpose of this project is to maintain the project area's forest ecosystems ecological structure and function within a natural and sustainable condition. The projected ecological succession within these watersheds will not maintain desired conditions, because of the limited role natural fire has been allowed to perform, and could pose a risk to watershed condition, fish, wildlife, and sensitive plant habitat.

DATES: Written comments and suggestions should be received on or before January 12, 2000 to receive timely consideration in the preparation of the draft EIS.

ADDRESSES: Send written comments and suggestions on the proposed action or requests for a map of the proposed action or to be placed on the project mailing list to Kevin Martin, District Ranger, Red River District, P.O. Box 416, Elk City, Idaho 83525.

FOR FURTHER INFORMATION CONTACT: Kara Chadwick, District Silviculturist, Red River Ranger District, P.O. Box 416, Elk City, Idaho 83525, phone (208) 842–2245.

SUPPLEMENTARY INFORMATION: The proposed action includes the following possible actions: (1) Maintaining the desired vegetation condition through timber harvest and/or prescribed burning; priority will be given to treat those vegetative ecosystems most at risk of moving outside the natural range of variability; this includes western larch, lodgepole pine, and ponderosa pine forest types, and candystick habitat; these actions may or may not provide timber products; (2) reducing the risk of adverse effects from wildfire to the aquatic resources and firefighter safety, again through timber harvest and/or prescribed burning; (3) improving fish habitat and stream morphology and function by reducing sediment production through road obliteration and other watershed improvement activities; (4) rehabilitating abandoned mine sites that pose a threat to the public or the environment; and (5) providing dispersed and roaded recreation opportunities compatible with other resources.

The scope of this analysis is limited to activities related to the purpose and need and measures necessary to mitigate the effects these activities may have on the environment. The decision will include if, when, how, and where to schedule: timber harvest, watershed improvement activities, road obliteration, prescribed burning, recreation site improvement and access management, resource protection measures, monitoring, and other K–V activities.

This project was originally scoped beginning in February of 1998 prior to undertaking preparation of an Environmental Assessment (EA). The EA was sent out for a 30-day comment period in May 1998. Due to the issues raised during the comment period, both internally and externally, the decision has been made to prepare an Environmental Impact Statement (EIS). This Notice of Intent serves as notice of the intent to prepare an EIS for the Starbucky Restoration Project. The issues raised and the alternatives developed as a result of the public participation for the EA will be brought forward for the EIS. The general categories of issues already identified, and the alternatives developed from the public participation are as follows:

Issues

- Current vegetative patterns, structures, and species composition, and effects of activities on these components.
- Effects on Threatened, Endangered, and Sensitive (TES) wildlife species and their habitat.
- Effects on TES plant species, especially candystick, due to the presence of a Priority One Conservation Unit for candystick.
- Effects on big game summer and winter range, security areas, and big game summer forage.
- Effects on water yield and peak flows, and effects of sedimentation to streams, all of which affect water quality and fish habitat.
- Concern for road densities.
- Concern over limited number of recreation sites/opportunities, and resulting impacts of these limitations to resources.
- Economics of proposal.
- Effect from cumulative effects.
- Current old growth allocation and effects of project on.
- Effects on not only visuals of area, but also in respect to the South Fork Clearwater River corridor.
- Access to active mining claims.
- Safety of public in regards to old, abandoned mine sites.
- Relationship of this proposal to the Interim Roads Rule.

Alternatives

In addition to the ''No Action'' alternative, five action alternatives have been identified for analysis:

(a) No action.

(b) Vegetative treatment through timber harvest and/or prescribed burning of approximately 1338 acres; verification and allocation of Forest Plan old growth; construction of approximately 5.0 miles of temporary road; obliteration of approximately 4.1 miles of existing road, along with other watershed improvement activities; mine reclamation; recreation site improvement; and access management.

(c) Vegetative treatment through prescribed burning only of approximately 330 acres of winter range; no road construction; verification and allocation of Forest Plan old growth; obliteration of approximately 4.1 miles of existing road, along with other watershed improvement activities; mine reclamation; recreation site improvement; and access management.

(d) Vegetative treatment through timber harvest and/or prescribed burning of approximately 675 acres; verification and allocation of Forest Plan old growth; construction of approximately 0.7 miles of temporary road; obliteration of approximately 4.1 miles of existing road, along with other watershed improvement activities; mine reclamation; recreation site improvement; and access management.

(e) Vegetative treatment through timber harvest and/or prescribed burning of approximately 1338 acres; verification and allocation of Forest Plan old growth; construction of approximately 6.1 miles of temporary road; obliteration of approximately 4.1 miles of existing road, along with other watershed improvement activities; mine reclamation; recreation site improvement; and access management.

(f) Vegetative treatment through timber harvest and/or prescribed burning of approximately 1338 acres; verification and allocation of Forest Plan old growth; construction of approximately 8.6 miles of temporary road; obliteration of approximately 4.1 miles of existing road, along with other watershed improvement activities; mine reclamation; recreation site improvement; and access management.

Note that the acreages, the miles of temporary road construction and miles of road obliteration are approximate only and may change during the analysis.

Public participation will continue to be an important part of the project, commencing with the EIS initial scoping process (40 CFR 1501.7), which starts with publication of this notice and continues for the next 30 days. In addition, the public is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, the Nez Perce Tribe, and other individuals or organizations who may be interested in or affected by the proposed action.

Comments from the public and other agencies will be used in preparation of the draft EIS. The scoping process will be used to:

1. Identify additional potential issues;
2. Identify additional major issues to be analyzed in depth;
3. Eliminate minor issues or those which have been covered by a relevant previous environmental analysis, such as the Nez Perce National Forest Plan EIS;
4. Identify additional alternatives to the proposed action;
5. Identify potential environmental effects of the proposed action and alternatives (*i.e.*, direct, indirect, and cumulative effects).

While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the draft EIS, which is expected to be filed with the Environmental Protection Agency and available for public review in March 2000. A 45-day comment period will follow publication of a Notice of Availability of the draft EIS in the **Federal Register**. The comments received will be analyzed and considered in preparation of a final EIS, which is expected to be filed in July 2000. A Record of Decision will be issued not less than 30 days after publication of a Notice of Availability of the final EIS in the **Federal Register**.

The Forest Service believes it is important at this early stage to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EISs must structure their participation in the environmental review of the proposal in such a way that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 513 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir, 1986), and *Wisconsin Heritages Inc.* v. *Harris*, 490 F.Supp. 1334, 1338 (E.D. Wis., 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period in order that substantive comments and objections are available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Bruce Bernhardt is the responsible official for this environmental impact statement.

Dated: November 29, 1999.

Bruce Bernhardt,

Forest Supervisor, Nez Perce National Forest.

[FR Doc. 99–32214 Filed 12–10–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Loon Mountain Ski Resort Development and Expansion Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement (EIS) rather than a Supplement to the Loon Mountain Ski Area South Mountain Expansion Project Final Environmental Impact Statement (FEIS) to disclose the environmental effects of Loon Mountain Recreation Corporation's (LMRC) proposal to develop and expand recreational facilities at Loon Mountain Ski Resort. The Forest Service has decided that the environmental analysis should be documented and disclosed in an EIS rather than a Supplement to the FEIS based on changes to the original purpose and need for the Proposed Action since the FEIS was prepared. The project area is located on the Pemigewasset Ranger District of the White Mountain National Forest, Grafton County, New Hamsphire. The agency invites written comments concerning the Proposed Action as described in proposal letters submitted to the Forest Service on January 26, and May 14, 1998; and reaffirmed and clarified on December 2, 1999.

DATES: Written comments concerning the Proposed Action should be received on or before January 12, 2000. No public scoping meetings are planned at this time. The Draft EIS is scheduled to be completed by June 2000, and the final EIS is scheduled to be completed by November 2000. The Forest Service will seek comments on the Draft EIS for a period of at least 45 days from the date the Environmental Protection agency publishes the Notice of Availability in the **Federal Register**. Public meeting dates and venues during the public comment public for the Draft EIS will be advertised in the media.

Resposible Official: Donna Hepp, Forest Supervisor, White Mountain National Forest, Federal Building, 719 Main Street, Laconia, New Hampshire, 03246 is the Responsible Official for the EIS.

Written Comments: Send written comments to Beth LeClair, Eastern Region Winter Sports Team Leader, US Forest Service, 99 Ranger Road, Rochester, Vermont, 05767; or E-mail to erwst/r9__gmfl@fs.fed.us.

FOR FURTHER INFORMATION CONTACT: Jay Strand, Project Coordinator, US Forest Service, 99 Ranger Road, Rochester, Vermont, 05767; TTY phone (802) 767–4261; voice phone (802) 767–4261 ext. 522; FAX (802) 767–4777; or E-mail, jstrand/r9__gmfl@fs.fed.us.

SUPPLEMENTARY INFORMATION:

Background

Loon Mountain Recreation Corporation (LMRC) operates Loon Mountain Ski Resort, a portion of which is under a Special Use Permit (SUP) issued and administered by the White Mountain National Forest (WMNF). In 1986, LMRC submitted a proposal to develop and expand the existing ski area to meet the demand for additional skiing on the WMNF, and to meet the demand for more capacity at Loon Mountain Ski Area. The environmental effects of the proposal and five alternatives were disclosed and documented at the Loon Mountain Ski Area South Mountain Expansion Project FEIS which was completed in late 1992. The Record of Decision (ROD) was issued on March 1, 1993 and authorized the implementation of Alternative 6 to meet the stated purpose and need. The 1993 ROD was litigated and the subsequent court ruling found that parts of the analysis were inadequate. A May 5, 1997 Court Order invalidated the 1993 ROD and prohibited any further activities related to Alternative 6 pending the outcome of a new analysis and ROD that addresses the identified FEIS inadequacies. On January 26, 1998 and May 14, 1998, LMRC submitted proposal letters to modify Alternative 6 to reflect changed conditions. Based on the acceptance of LMRC's proposal, the Forest Service issued a Notice of Intent (NOI) dated August 4, 1998 to prepare a Supplement to the FEIS that would address the May 5, 1997 Court Order, update the analysis with new information, and disclose the environmental effects of the proposal as submitted by LMRC. On March 31, 1999 the Forest Service issued a public newsletter that modified the Proposed Action. The modifications included the addition of the construction and operation of a 16-inch snowmaking pipeline to provide instantaneous snowmaking capacity to the ski terrain within the existing SUP area. Although the Proposed Action has not changed since the August 1998 NOI and March 31, 1999 Newsletter, the Forest Service has decided that the environmental analysis should be documented and disclosed in an EIS rather than a Supplement to the FEIS. This decision is based on changes to the original purpose and need for the Proposed Action since the FEIS was prepared.

Purpose of and Need for Action

The purpose of LMRC's proposal is to ensure a continued high-quality winter recreation experience for existing and future skiers and snowboarders at Loon Mountain Ski Resort through the following means: (1) Improving the variety, diversity, and amount of terrain by adding new trails with different characteristics; (2) improving skier distribution and convenience by adding and upgrading lifts; (3) improving skier and snowboarder access and egress by developing a second portal; (4) increasing the quality and capacity of base-area and on-mountain facilities; (5) improving snow conditions by increasing the total and instantaneous snowmaking coverage; and (6) adding parking facilities. The need for the proposal is to: (1) To respond to a proposal by LMRC which has the potential for offering more effective recreation utilization of National Forest System lands; (2) address shortcomings in the existing design, operations, and facilities of Loon Mountain, respond to guest preferences to Loon Mountain Ski Resort, and stay abreast of evolving ski market trends; (3) fulfill the WMNF Forest Plan management goals and objectives for Management Area 7.1 and 9.2; (4) ensure that LMRC remains a viable operation so that high-quality public recreation opportunities continue to be offered over the long term at Loon Mountain Ski Resort; and (5) respond to court orders directing the Forest Service to address the inadequacies of the 1992 FEIS, and disclose the effects of the 16-inch pipeline.

Description of Proposed Action and Tentative Alternatives

The Proposed Action as resubmitted by LMRC in a letter dated December 2, 1999 and accepted by the Forest Service includes ten categories: (1) expansion of the SUP area by 581 acres for a total of 1,366 acres; (2) construction of six new ski trails and a free style jump (30.9 acres), widening of many existing ski trails (20.1 acres), reconfiguration of the Lower Speakeasy trail system within the existing SUP area, and construction of six new trails (73.2 acres) within the expanded SUP area; (3) construction of one new J-bar lift on private land, realignment of two existing lifts, and upgrade of all existing lifts within the existing SUP area, and the construction of two new chairlifts within the expanded SUP area; (4) expansion of existing buildings on private land and within the existing SUP area, and construction of a base area and lodge for the expanded SUP area on private land; (5) expansion of existing parking lots and construction of new parking facilities on private land; (6) provision to meet 100% of a 449.7 million gallon snowmaking water demand target in 85% of the years for complete coverage for 382.3 acres of ski terrain on both the existing and expanded SUP areas; (7) provision to continue water withdrawals within levels currently authorized from the East Branch of the Pemigewasset River (East Branch) and Boyle Brook for snowmaking needs, and elimination of snowmaking water withdrawals from Loon Pond once adequate snowmaking water storage facilities are in place and operational; (8) installation of a 16-inch diameter pipeline and associated facilities to serve the existing SUP area, installation of a 20-inch diameter pipeline and associated facilities to serve the expanded SUP area, and installation of pipelines and associated facilities from water storage ponds on private land to provide complete snowmaking coverage of the entire Loon Mountain ski terrain; (9) construction of multiple water storage ponds with a total capacity of 160 million gallons on private land for snowmaking water needs; and (10) increase the existing skier comfortable carrying capacity from 5,800 to 9,000.

The EIS analysis will include the Proposed Action and the No Action Alternative. Tentative alternatives may include: (1) Pre-1993 conditions with the 16-inch pipeline and snowmaking water storage facilities only; (2) Existing condition (includes trails and infrastructure constructed and in use within the existing SUP area since 1993); (3) Development within the existing SUP area only; and (4) various options for target water demand needs and water storage facilities and requirements. Additional alternatives that meet the purpose and need of the Proposed Action may be developed to address issues based on public comments received in response to this NOI.

Tentative Issues

Tentative issues that have been identified from public and agency comments to the Supplemental EIS Proposed Action include: (1) Skier comfortable carrying capacity is too high; (2) snowmaking water demand target is too high; (3) consider the Main Stem of the Pemigewasset River as a

snowmaking water source; (4) February median flow should be the minimum for water withdrawals from the East Branch, and a minimum flow for water withdrawals should be set for Boyle Brook; (5) a full range of water storage options should be considered for snowmaking needs; (6) visual impacts; (7) impacts to private residences at the base of Loon Mountain from parking facilities and associated traffic; (8) not enough opportunity for glade and tree skiing; (9) include cross-over trails between South Mountain and the existing ski area; (10) maintain natural snow only ski trails; (11) the purpose and need for the Proposed Action is questionable; (12) wetland impacts from water storage pond construction; (13) impacts to various resources (*i.e.,* soils, water quality, wildlife and aquatic habitat, threatened, endangered, and sensitive plants and animals, and cultural sites); and (14) socioeconomic impacts to the local community (*i.e.,* dependent businesses, traffic congestion, and infrastructure demands).

Decision To Be Made

The site-specific environmental analysis provided by the EIS will assist the Responsible Official in determining whether the Proposed Action, or an alternative to the Proposed Action, best meets the purpose and need of the Proposed Action while addressing public concerns and issues. In preparing the EIS, the Forest Service will consider the Proposed Action against a range of feasible and practicable alternatives including the No Action Alternative. The Responsible Official will consider the comments, responses, and environmental consequences discussed in the Final EIS, and applicable laws, regulations, and policies when making a decision regarding this proposal. The Responsible Official will document the decision and reasons for the decision in the Record of Decision. The decision will be subject to appeal under 36 CFR 217 and 36 CFR 251.

Public Participation

Public participation will be incorporated into the preparation of the EIS under the provisions of the National Environmental Policy Act. The Forest Service solicited comments for 42 days after the August 4, 1998 Notice of Intent, 37 days after the March 31, 1999 Newsletter, and accepted comments at three public meetings. Information and written comments received from the public and agencies during the August 1998 and March 31, 1999 Newsletter scoping periods for the Supplement to the FEIS will be considered as part of the analysis for the EIS, and will be used in preparation of the Draft EIS and Final EIS. Written comments responding to this NOI should be submitted to the Forest Service within 30 days from the date of publication of this NOI in the **Federal Register**. Please note that comments in response to this NOI and in response to the Draft EIS will be regarded as public information including names and addresses.

The Forest Service believes at this early stage it is important to give reviewers notice of court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. [*Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978)*]. Also, environmental objections that could be raised at the Draft EIS stage but that are not raised until after completion of the FEIS may be waived or dismissed by the Courts [*City of Angoon* v. *Hodel,* 803 F2d 1015, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)]. Because of these court rulings, it is very important that those interested in this Proposed Action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when they can meaningfully consider them and respond to them in the Final EIS.

Cooperating and Participating Agencies

The State of New Hampshire Department of Environmental Services, New Hampshire Fish and Game Department, U.S. Army Corps of Engineers, and U.S. Environmental Protection Agency were cooperating agencies in preparing the Supplement to the FEIS and will continue to be cooperating agencies in preparing the new EIS. The U.S. Fish and Wildlife Service will continue as a participating agency. The New Hampshire Department of Transportation, New Hampshire Department of Resources and Economic Development, and the Towns of Lincoln and Woodstock, New Hampshire will continue to assist in the analysis process.

Potential Permits

Potential permits required to implement the Proposed Action may include the following: (1) Special Use Permit from the Forest Service; (2) Section 404 permit from the U.S. Army Corps of Engineers; (3) National Pollution Discharge Elimination System permit and Stormwater Permit from the U.S. Environmental Protection Agency; and (4) Significant Alteration of Terrain Permit, Section 401 Permit, Dam Permit, and Stormwater Permit from the New Hampshire Department of Environmental Services. Any additional permits needed from Local, State, and Federal agencies will be identified during the analysis process. In addition, consultation with the U.S. Fish and Wildlife Service for compliance with Section 7 of the Endangered Species Act, and any assistance and cooperation from other agencies will be conducted as needed.

Dated: December 7, 1999.

Anne Archie,

Acting Forest Supervisor.

[FR Doc. 99–32155 Filed 12–10–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by February 11, 2000.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Program Development & Regulatory Analysis, Rural Utilities Service, USDA, 1400 Independence Ave., SW., STOP 1522, Room 4034 South Building, Washington, DC 20250–1522. Telephone: (202) 720–0736. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION:

Title: Distance Learning and Telemedicine Loan and Grant Program.

OMB Control Number: 0572–0096.

Type of Request: Reinstatement with change of a previously approved information collection.

Abstract: The Rural Utilities Service's (RUS) Distance Learning and Telemedicine (DLT) Loan and Grant program provides loans and grants for advanced telecommunications services to improve rural areas' access to educational and medical services. The

various forms and narrative statements required are collected from the applicants (rural community facilities, such as schools, libraries, hospitals, and medical facilities for example). The purpose of collecting the information is to determine such factors as: eligibility of the applicant; the specific nature of the proposed project; the purposes for which loan and grant funds will be used; project financial and technical feasibility; and, compliance with applicable laws and regulations. In addition, for grants funded pursuant to the competitive evaluation process, information collected facilitates the Rural Utilities Service's selection of those applications most consistent with DLT goals and objectives in accordance with the authorizing legislation and implementing regulation.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 50 hours per response. In addition, it is estimated each of the anticipated 150 award recipients will average 12 hours to provide legal, audit, and related documentation.

Respondents: Business or other for-profit and non-profit institutions.

Estimated Number of Respondents: 300.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 16,800.

Copies of this information collection can be obtained from Bob Turner, Program Development and Regulatory Analysis, at (202) 720–0696.

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques on other forms of information technology. Comments may be sent to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Stop 1522, Room 4034 South Building, Washington, DC 20250–1522.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: December 2, 1999.

Christopher A. McLean,

Acting Administrator, Rural Utilities Service.

[FR Doc. 99–32141 Filed 12–10–99; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Census Bureau

Evaluation of the Census 2000 Telephone Questionnaire Assistance (TQA) Program

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 11, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Wendy Davis, Bureau of the Census, DSCMO 2424/2, Washington, DC 20233–0001, (301) 457–4051.

SUPPLEMENTARY INFORMATION:

I. Abstract

Customer satisfaction surveys will be administered to a sample of people who access the Telephone Questionnaire Assistance (TQA) program through either the English or Spanish toll free telephone numbers. The caller will be asked to complete an Interactive Voice Response (IVR) survey that asks callers to rate different characteristics of their TQA interaction. The survey will be tailored to whether the caller completed his/her call using the available IVR instrument or by speaking with a TQA agent. In general, the surveys evaluate specific aspects of the callers' TQA experience, but callers will also be asked to rate their overall satisfaction with TQA.

This evaluation is unique, given its technical environment. This evaluation will serve as an indication of the success of the TQA 2000 project (as measured by customer satisfaction), thereby providing substantial feedback for future Census telephone products.

A systematic sample will be selected at the point when the call enters the TQA network, but prior to the caller hearing the greeting to the TQA system in the IVR. Once callers enter the IVR, they will be notified that they have been selected to participate in a short customer satisfaction survey. Approximately 50,000 TQA respondents will be asked to participate in the survey, with an expected response rate of 15 percent resulting in 7,500 completed customer satisfaction surveys. The sample selection begins at the open of TQA 2000 (March 3, 2000) and will be completed by the end of the TQA progam (June 8, 2000).

II. Method of Collection

The customer satisfaction surveys will be administered at the conclusion of the respondents call to TQA. When the callers indicate that they have completed their TQA transaction, they will be informed that they will be automatically transferred to an automated customer satisfaction survey and that the survey is estimated to take less than 3 minutes to complete. Once the transfer takes place, the caller will be prompted to indicate whether they have a touch tone phone or not. The customer satisfaction survey will be tailored to their touch tone or rotary capabilities. The completed surveys will be compiled for evaluation purposes.

III. Data

OMB Number: Forthcoming.

Form Number: This telephone survey will have no form.

Type of Review: Regular Submission.

Affected Public: Those who receive Census short or long forms or update/leave (US and Puerto Rico) and have direct access to a telephone.

Estimated Number of Respondents: 50,000.

Estimated Time Per Response: 2 minutes.

Estimated Total Annual Burden Hours: 1,667.

Estimated Total Annual Cost: There is no cost to the respondent other than the time taken to complete the survey.

Respondents Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Sections 141 and 193.

IV. Request for 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 (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 8, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–32159 Filed 12–10–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 99–BXA–04]

MK Technology Associates, Ltd., Respondent; Decision and Order

This matter is before me for review pursuant to § 766.22 of the Export Administration Regulations. On October 20, 1999, Administrative Law Judge Harry J. Gardner issued a recommended decision and order that granted the respondent's motion for summary dismissal of the charging letter and ordered that the case be dismissed with prejudice to the Bureau of Export Administration's Office of Export Enforcement. For the reasons stated below, I am adopting the ALJ's recommended decision and order.

The ALJ's decision sets out the factual background of this case. In summary, prior to the issuance of the charging letter, lawyers for the respondent and for the Office of Export Enforcement (OEE) attempted to conclude an agreement to extend the statute of limitations so that they could pursue further settlement negotiations. The success of that attempt is the issue now. After the attempted extension of the statute of limitations and after failed settlement negotiations, the Office of Export Enforcement issued a charging letter. The respondent moved to dismiss the charging letter claiming that the statute of limitations barred administrative action. The ALJ agreed. He found that the attorneys had failed to conclude an agreement to extend the statute. The ALJ recommended that I dismiss the charging letter.

Before addressing the merits of the ALJ's recommendation, I must deal with OEE's request that I remand the case to the ALJ to consider OEE's submission. The respondent filed its motion to dismiss the charging letter with the ALJ on August 18, 1999. The ALJ issued his recommended decision and order on October 20. OEE did not file a response to the motion with the ALJ. Neither counsel cites a rule that sets a time limit on OEE's response to the motion.

OEE now asks that I remand this case to the ALJ so that he may consider OEE's position. The respondent opposes this request. It argues that OEE had its chance to respond, that there are no disputed issues of fact, and that the respondent should not be put to the expense of further litigation because of the dereliction of OEE's attorneys in allowing two months to pass without responding to the motion.

I decline to remand this case to the ALJ since that would serve no purpose. First, there are no disputed issues of fact. This issue is about drafts of the ''agreement'' that purported to extend the statute of limitations and faxes of those drafts. Those drafts and faxes are in the record and neither side questions their authenticity. Not only are there no disputes on the facts, OEE adds no new facts that the ALJ did not consider. There is no reason to believe that the ALJ would come to any different conclusion. Finally, I have carefully considered OEE's submission to me. Giving it all possible weight, I cannot find a way to agree with its contention that the ALJ erred in concluding that there was no agreement to extend the statute of limitations.

Since there appears to be no rule requiring OEE to respond to the motion in a particular time, and since the ALJ does not appear to have set a briefing schedule, I see no justification to ''punish'' OEE or, as the respondent requests, preclude it from opposing the dismissal now. I will not, however, punish the respondent for OEE's inaction by imposing upon the respondent (or the ALJ for that matter) further unnecessary litigation.

On the merits of the issue, I agree with the ALJ and only add a few comments. The crux of the ALJ's decision is that no ''valid enforceable agreement with respect to the extension of the statue of limitations'' was concluded. Counsel for OEE argues that an agreement was reached, and that the language changes to the agreement that she made unilaterally were ''minor textual edits'' that did not materially change the burdens of the respondent under the agreement. I do not have to decide whether a minor change to the language of the agreement would have voided the respondent's ''offer'' to extend the statute of limitations. These changes were not ''minor.''

Counsel for OEE is correct that the language she proposed has similar meaning to the language that counsel for respondent proposed. But in the circumstances of this negotiation any difference in language was material. This language went to the heart of what violations were covered by the statute extension. Counsel for the respondent was very concerned with this language. He changed the language that OEE originally offered and even took the time to retype the entire document. He was surrendering his client's right to bar administrative punishment. Counsel for respondent immediately objected when he found out that his language had been changed. I cannot call the changes ''minor'' or ''immaterial.''

The most probative evidence that the exact language was important to the parties and not immaterial were the actions of counsel for OEE herself. If the language difference was so immaterial why did she reject the respondent's clear, unassailable agreement to extend the statue and then make her own changes to respondent's language? Why did she bother to rephrase and retype the document for something ''minor'' and ''immaterial''? How can OEE now argue that this is not a significant matter when the record clearly shows that, at the time, OEE's attorney was adamant in not accepting the respondent's language? It is clear that each attorney wanted her or his exact language. Neither got it. There was no agreement.

A paragraph that remained the same in all drafts of the agreement read:

> In the event of a dispute between the parties in any administrative proceeding or judicial action between the parties with respect to the statute of limitations, this Agreement may be introduced into evidence to show the parties' intent regarding the matters encompassed herein.

The question is, which copy of the agreement do we now look to? The copy that OEE's counsel said she was ''purging''? The copy that contains OEE counsel's unapproved edits of respondent's language and bears respondent's counsel's signature from an earlier, different draft? Or the copy OEE's counsel ''accepted'' after the statue had run but whose text OEE

counsel had told counsel for respondent that she rejected?

This is more than a question of contact law. My decision in this case will guide Bureau of Export Administration employees in dealing with the public. Even if the changes OEE's counsel made without consulting respondent's counsel would not have prevented the formation of a commercial contract, they prevent an extension of the statute of limitations in this bureau. In the Bureau of Export Administration, at least, we do not change someone's words without his consent. This agreement could have had handwritten portions, it could have been faxed, it could have been e-mailed. But both the parties had to have agreed on all the same words. It is important that agreements to which this agency is a party are clear, unambiguous, and agreed to by all sides.

I hasten to add that there is no evidence in the record that the respondent's counsel was operating in other than good faith. On two occasions before the statute ran, he sent documents to counsel for OEE that, had the latter not rejected them, would have extended the statute. But even if counsel had been acting in bad faith, OEE's remedy was simple. It should have filed a charging letter.

The result in this case should encourage counsel to treat the statute of limitations with more respect. The Office of Export Enforcement should review its procedures for ''old'' cases such as this. The parties here were trying to extend the statute for the fourth time. While I understand the value of resolving cases by settlement, and I agree that it is appropriate to extend the statute of limitations to facilitate that, such extensions should not be infinite.

Order

It is hereby ordered that the ALJ's Recommended Decision and Order Granting Respondent's Motion for Summary Dismissal is approved.

It is further ordered that the charging letter dated March 31, 1999, that the Office of Export Enforcement filed against ''MK Technology Inc.'' [1] dismissed with prejudice against the Office of Export Enforcement.

It is further ordered that the Decision and Order and the ALJ's Recommended Decision and Order Granting Respondent's Motion for Summary Dismissal shall be served on the parties and published in the **Federal Register.** This is the final agency action on this matter.

Entered this 7th day of December, 1999.

William A. Reinsch,

Under Secretary for Export Administration.

Recommended Decision and Order Granting Respondent's Motion for Summary Dismissal

On August 18, 1999, MK Technology Associates, Lt. (''Respondent''), filed a Motion for Summary Dismissal pursuant to the Bureau of Export Administration's (''BXA'' or ''Agency'') procedural regulations codified at 15 CFR 766.8 (1998), arguing that commencement of this administrative action is time barred by the applicable five-year statute of limitations established in 28 U.S.C. 2462. The Respondent's Motion for Summary Dismissal is supported by exhibits that all show that BXA Counsel, Mi-Yong Kim, Esq., attempted to secure a waiver of the statute of limitations on several occasions. After receiving a copy of the Respondent's Motion for Summary Dismissal, Agency counsel contacted the undersigned Judge and informed him that a response would be filed. To date, Agency counsel has failed to file a response.

After careful review of the applicable law and the exhibits submitted by Respondent's counsel in support of the Motion for Summary dismissal, said motion is hereby *Granted.*

(i)

The facts and procedural history of this case are as follows: [1]

In September and October of 1993, MK Technology allegedly committed three violations of the Export Administration Act of 1979, as amended and codified in 50 U.S.C. app. secs. 2401–2420 (1991 & Supp. 1998) [2] and the regulations promulgated thereunder currently codified at 15 CFR parts 730–774 (1998).[3] While the case was pending investigation, several statute of limitations waiver agreements were executed between September 1998 and January 1999, BXA counsel, Mi-Yong Kim and Respondent's previous counsel, Michael X. Marinelli, Esq. and Paul T. Luther, Esq. of the law firm of Baker & Botts, LLP. (Respondent Exhibits 1A–4B).[4] The last statute of limitation waiver agreement signed and executed on January 7, 1999 by Mr. Luther on behalf of MK Technology suspended the running of the statute of limitations in this case until February 16, 1999. (Respondent Exhibit 4B).

Somethime thereafter, the Respondent terminated the attorney-client relationship with Mr. Marinelli and Mr. Luther and hired Anthony P. Bisceglie, Esq., as legal counsel.

On February 11, 1999, BXA legal counsel, Mi-Yong Kim sent Mr. Bisceglie a proposed statute of limitations waiver agreement that would further extend the running of the statute of limitations until March 31, 1999. (Respondent Exhibit 5A).[5] Mr. Bisceglie refused to sign this agreement because of concerns that the language was overbroad and there were questions concerning the scope and validity of the prior statute of limitations waiver agreements executed by Respondent's previous counsel. (Respondent Exhibit 1B).[6]

Instead, on February 12, 1999, Mr. Bisceglie sent to Ms. Kim, a retyped

[1] The charging letter was issued against ''MK Technology, Inc.'' On August 19, 1999, counsel for the respondent indicated that the respondent's correct name is ''MK Technology Associated, Ltd.'' The pleadings after that point use the name MK Technology Associates, Ltd. The dismissal is effective as to the respondent under either name.

[1] The facts and exhibits as presented by the Respondent in support of the Motion for Summary Dismissal are accepted and incorporated by reference.

[2] Although the Export Administration Act of 1979 expired on August 20, 1994, the statute and the applicable regulations remain in effect pursuant to:

(a) Executive Order 12924 located at 3 CFR, 1994 Comp. 917 (1995);

(b) Presidential Notices of August 15, 1995 located at 3 CFR 1995 Comp. 501 (1996), August 14, 1996 located at 3 CFR, 1996 Comp. 298 (1997), August 13, 1997 located in 3 CFR, 1997 Comp. 306 (1998), and August 13, 1998 published in 63 FR 44121 (August 17, 1998); and

(c) The International Emergency Economic Powers Act, amended and codified at 50 U.S.C.A. 1701–1706 (1991 & Supp. 1998).

[3] the violations alleged in this case occurred in 1993. Since that time, the 1993 version of the Export Administration Regulations that was codified in 15 CFR parts 768–79 have been reorganized and restructured. The current regulations are codified at 15 CFR parts 730–74 (1998) and establish the procedures that apply in this matter.

[4] With respect to Respondent Exhibit 1A, it appears that Respondent's present counsel, Anthony P. Bisceglie, Esq., failed to include the proposed agreement that extended the statute of limitations until October 15, 1998. Instead, the proposed agreement that waived the statute of limitation until December 15, 1998 was inadvertently attached to the ''Fax Cover Page'' sent by BXA Counsel to waive the statute of limitations until October 15, 1998.

[5] The agreement was not attached and included as part of Respondent Exhibit 5A, but there is a Fax Cover Page sent from Mi-Yong Kim of BXA to Mr. Bisceglie which shows an intent to extend the statute of limitations until March 31, 1999.

[6] Mr. Bisceglie states that BXA's failure to respond to Respondent's previous counsel's cover letter dated September 4, 1998, that conditioned MK Technology's agreement to the extension of the statute of limitation on the ''understanding that the extension applies only to investigation of matters described in its voluntary disclosure letter of April 7, 1997'' indicates that the parties did not have a ''meeting of the minds'' with respect to the initial agreement. Thus, according to Mr. Bisceglie, a valid binding agreement was never established in accordance with contract principles under Restatement (Second) of Contracts § 39, cmt. b. (*See*, Respondent Exhibit 1B).

signed counter-proposal that specifically limited the waiver of the statute of limitations until March 31, 1999 to violations included in BXA's September 29, 1998 pre-charging letter. On that same day, based upon a telephonic voice mail message left by Ms. Kim in which she stated that she would ''purge'' the retyped counter-proposal, Mr. Bisceglie made handwritten editorial changes to the agreement that was sent by Ms. Kim on February 11, 1999. The agreement containing the hand written editorial changes was signed and returned to Ms. Kim on February 12, 1999. (Respondent Exhibits 5 and 6).

On February 16, 1999, the day the January 7th agreement was to expire, another proposal with similar handwritten editorial changes was initialed and signed by Mr. Bisceglie and sent to Ms. Kim. (Respondent Exhibit 7). Ms. Kim retyped the first page of this agreement, edited the Respondent counsel's proposed changes, and sent the document containing both signatures to Mr. Bisceglie. (Respondent Exhibit 8).

Mr. Bisceglie immediately responded. In a letter dated February 17, 1999, he noted that the first page of the agreement was changed and Ms. Kim had taken the ''liberty of simply affixing a signature page containing'' his signature from a previous draft before he could review and execute the agreement in final form. Mr. Bisceglie requested another copy of the unsigned agreement for review and approval by MK Technology. (Respondent Exhibit 9). Instead of sending him another copy of the same agreement, Ms. Kim sent and signed the handwritten version of the agreement that was submitted by Mr. Bisceglie on February 12, 1999. (*Compare* Respondent Exhibit 5 *with* Exhibit 10). In the Fax Cover Page accompanying the agreement, Ms. Kim noted, ''The agreement * * * faxed to (Mr. Bisceglie on February 16, 1999) incorporated the changes * * * requested and the sentence was edited to make it more clear. The Department did not materially modify [the] proposed changes to the agreement.'' (Respondent Exhibit 10).

Thereafter, BXA offered to settle the matter against MK Technology and avoid administrative proceedings. The Agency also offered to facilitate an internal review of the matter by delaying the issuance of a formal charging letter on a condition that MK Technology agrees to waive the statute of limitations.

In a letter dated March 31, 1999, MK Technology rejected BXA's offer of settlement and refused to waive the statute of limitations defense, noting that the Agency had failed to secure a valid waiver before the expiration of the statue of limitations on February 16, 1999. (Respondent Exhibit 11). Mr. Bisceglie also informed Ms. Kim that MK Technology affirmatively denies that the Export Administration regulations were violated and further informed her that his clients will seek further ''Departmental review'' if BXA decides to initiate enforcement proceedings. *Id.*

Later that same day, BXA filed a Charging Letter with the United States Coast Guard Administrative Law Judge Docketing Center initiating an administrative action against the Respondent. The administrative action was brought by BXA pursuant to applicable export laws and regulations, authorization from the U.S. Office of Personnel Management under 5 U.S.C. 3344 and 5 CFR 930.213, and a Memorandum of Understanding entered into between the United States Coast Guard and Bureau of Export Administration.

In the Charging Letter dated March 31, 1999, the Agency seeks imposition of administrative sanctions, including a maximum civil penalty, denial of export privileges, and exclusion from practice before BXA against MK Technology for allegedly violating three sections of the former Export Administration Regulations codified at 15 CFR Parts 768–779 (1993). Charges 1 and 2 state that the Respondent's codified at 15 CFR Parts 768–779 (1993). Charges 1 and 2 state that the respondent's allegedly violated §§ 787.4(a) and 787.6 by exporting certain computer equipment on or about September 24, 1993, to China Xiao Feng Technology & Equipment while knowing or having reason to know that the shipment was contrary to the conditions of their license. Charge 3 provides that the Respondent allegedly violated Section 787.10 of the former regulations by permitting a third party to export certain computer equipment from the United States to the People's Republic of China under its BXA license without prior written approval from the Office of Export Licensing.

On April 22, 1999, the Respondent filed an answer denying the charges together with a request for production of documents. In its answer, Respondent affirmatively stated that this present action is time barred by the applicable statute of limitations.[7]

The above captioned matter was subsequently assigned to the undersigned Judge by the Chief Administrative Law Judge for the United States Coast Guard on June 18, 1999.

(II)

Under 15 CFR 766.8, an Administrative Law Judge may issue a summary decision and order where there existed no genuine issue of material fact and the moving party is entitled to a summary decision as a matter of law. Substantive law dictates which facts are material and only those disputes that affect the outcome of the case will properly preclude the entry of summary decision. *See, Anderson* v. *Liberty Lobby, Inc,* 477 U.S. 242, 247 (1986) (interpreting Fed. R. Civ. P. 56(c), which authorizes the granting of summary judgement where there exists no genuine issue of material fact and where the moving party is entitled to judgement as a matter of law).

In ruling on a summary decision motion, all reasonable inferences are viewed in a light most favorable to the nonmoving party. *Id.* at 255. The moving party bears the initial burden of identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, that demonstrate the absence of a genuine issue of material fact. *See, Celotex Corp.* v. *Catrett,* 477 U.S. 317, 323–24 (1986) (interpreting Fed. R. Civ. P. 56(c)). Once the moving party establishes that there exists no genuine issue of material fact, the burden shifts to the nonmoving party to set forth specific facts that establish a genuine issue for hearing. *See, id; Anderson,* 477 U.S. at 256. Mere conclusory allegations are insufficient to defeat a summary decision motion. *Anderson,* 477 U.S. at 256. The nonmoving party must adduce sufficient evidence to support a favorable decision. *Id.* at 248. Moreover, summary decision will be granted against ''a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden at (the hearing).'' *Celotex,* 477 U.S. at 322.

The pivotal issue in this case is whether a valid enforceable statute of limitations waiver agreement exists between the parties. If this case were to go to hearing, the burden of proving the

[7] The respondent also raised constitutional challenges to the validity of the Export Administration Act and claims that the terms of the BXA licenses allegedly violate the Due Process Clause of the 5th Amendment to the United States Constitution. The Respondent's constitutional arguments are not addressed herein. Moreover, even if the Respondent had included the constitutional arguments in the motion for summary dismissal, it is well settled that Administrative law Judges lack authority to rule on such issues.

existence and validity of the waiver would lie with BXA. *See generally, U.S.* v. *McGaughey*, 977 F.2d 167, 1071 (7th Cir. 1992), *cert. denied*, 507 U.S. 1019 (1993). Absent a valid waiver, the administration action in this matter is time-barred. 28 U.S.C. 2462; *see also, Henke* v. *U.S.*, 60 F.3d 795, 798 n.3 (Fed. Cir. 1995).

Section 2462 of Title 28 of the United States Code imposes a five-year statute of limitation on the commencement of enforcement proceedings brought by BXA under the Export Administration Act. *See, U.S.* v. *Core Laboratories, Inc.*, 759 F.2d 480, 481 (5th Cir. 1985). It is well-settled that an individual under investigation may expressly waive the statute of limitations defense in hopes that further discussion may result in a more favorable disposition of the case or prevent the Government from bringing an enforcement action. *See, U.S.* v. *Spector*, 55 F.3d 22, 24 (1st Cir. 1995) (interpreting criminal statute of limitation); *U.S.* v. *Del Percio*, 870 F.2d 1090, 1093 (6th Cir. 1989) (interpreting criminal statue of limitation). In order for the waiver of the statute of limitations to be valid, however, it must be knowingly and voluntarily made by the Respondent. *See, Spector*, 55 F.3d at 24; *U.S.* v. *Wild*, 551 F.2d 418, 423, (D.C. Cir. 1977), *cert. denied,* 431 U.S. 916 (1977). Moreover, where, as in this case, the waiver of the statute of limitations has been reduced to writing, traditional contract principles often apply. *See. Spector,* 55 F.3d 22; *Reich* v. *Eveready Flood Control Corp.*, No. 94 C 2331, 1995 U.S. Dist. Lexis 10397 (N.D. Ill., Jul. 25, 1995); *but see, McGaughey,* 997 F.2d at 1072 (ruling that the statute of limitations waivers are not contracts in cases where the federal government is collecting tax deficiencies and tax liability has been previously established).

For an enforceable agreement to exist between two parties, there must be mutual assent by the contracting parties on the essential terms and conditions of the subject about which they are contracting. *See, Reich*, 1995 U.S. Dist. Lexis 10397, at *7; *see also,* Reinstatement (Second) of Contracts § 17. The manifestation of mutual assent takes the form of an offer or proposal by one party followed by acceptance by the other party. Restatement (Second) of Contracts § 22., cmt. a. If a party, in anyway, changes or modifies the terms of an offer or proposal it constitutes a rejection of the original offer or proposal and becomes a counteroffer that must be accepted by the original offeror before an enforceable agreement is formed. Restatement (Second) of Contracts § 39, cmt. a. *See, Venture Assoc. Corp.* v. *Zenith Data Sys. Corp.*, 987 F.2d 429, 432 (7th Cir. 1993) (offeree's returning of proposed agreement with minor, non-substantive changes added in writing constituted a counteroffer); *United States Can Co.* v. *NLRB*, 984 F.2d 865, 869 (7th Cir. 1993) (striking out a single term of an offer creates a counteroffer, which the other party must accept or there is no contract). Once a party has rejected an offer, that party cannot afterwards revive the original offer by tendering acceptance of it. *Minneapolis & St. Louis Ry.* v. *Columbus Rolling Mill,* 119 U.S. 149, 151 (1886); *Shaffer* v. *BNP/Cooper Neff, Inc.*, Civil Action No. 98–71, 1998 U.S. Dist. Lexis 14013, at *14 (E.D. Pa., Sept. 4, 1998); *Hicks Road Corp.* v. *Marathon Oil Co.*, No. 94 V 3409, 1994 U.S. Dist. Lexis 9095, at *6 (N.D. Ill., Jul. 6, 1994).

In this case, the Respondent has established that a valid enforceable agreement with respect to the extension of the statute of limitations was never created between the parties. At best, the parties were still negotiating the terms of the statute of limitations waiver agreement. BXA counsel's attempt to create an enforceable agreement by retyping the first page of the February 16, 1999, proposed statute of limitation waiver agreement and affixing her signature to a signature page containing Respondent's counsel's signature taken from a previous draft agreement is improper. (*See,* Respondent Exhibit 7 & 8). This is especially true where Respondent's counsel was not initially consulted and was not given an opportunity to review the retyped agreement, and obtain approval from his client, MK Technology. (*See* Respondent Exhibit 9). The fact that the February 16, 1999 agreement did not ''materially modify'' the agreement that Respondent counsel signed on February 12, 1999 is of no consequence. Furthermore, once BXA counsel rejected the February 12, 1999 statute of limitation waiver agreement that was signed by Respondent's counsel, Ms. Kim could not later revive the offer by signing the agreement on February 17, 1999, a day after the statute of limitations period expired. (*See,* Respondent Exhibit 10).

Based on Respondent's evidence and BXA's failure to rebut or otherwise respond to the Motion for Summary Decision, the Undersigned has no choice but to find that the Respondent has established that there is no genuine issue of material fact that this matter is time barred by the applicable statute of limitations.

Order

Wherefore it is hereby ordered that the Respondent's Motion for Summary Decision be granted.

It is hereby further ordered that the above-captioned matter be *dismissed with prejudice* against the Bureau of Export Administrative refiling this case at a later date.

So ordered:

Dated this 20th day of October 1999, Baltimore, Maryland.

Harry J. Gardner,

Administrative Law Judge, United States Coast Guard.

[FR Doc. 99–32188 Filed 12–10–99; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–813]

Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On June 8, 1999, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on canned pineapple fruit from Thailand. This review covers five producers/exporters of the subject merchandise. The period of review is July 1, 1997, through June 30, 1998. Based on our analysis of comments received, these final results differ from the preliminary results. The final results are listed below in the ''Final Results of Review'' section.

EFFECTIVE DATE: December 13, 1999.

FOR FURTHER INFORMATION CONTACT: David Layton or Charles Riggle, Office 5, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0371 and (202) 482–0650, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of

Commerce (the Department) regulations are to the regulations codified at 19 CFR Part 351 (April 1998).

Background

This review covers the following producers/exporters of merchandise subject to the antidumping duty order on canned pineapple fruit from Thailand: Siam Food Products Public Co., Ltd. (SFP); The Thai Pineapple Public Co., Ltd. (TIPCO); Siam Fruit Canning (1988) Co., Ltd. (SIFCO); Kuiburi Fruit Canning Co., Ltd. (KFC); and Vita Food Factory (1989) Ltd. (Vita). We also received review requests from Malee Sampran Public Co., Ltd. (Malee) and Dole Food Company, Inc., Dole Packaged Foods Company, and Dole Thailand, Ltd. (collectively, Dole). For the reason noted below, we are rescinding the review with respect to Malee and Dole. On June 8, 1999, the Department published the preliminary results of this review. *See Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand,* 64 FR 30476 (*Preliminary Results*). On July 8 and 15, 1999, we received case briefs and rebuttal briefs, respectively, from Maui Pineapple Co., Ltd. and the International Longshoremen's and Warehousemen's Union (jointly, the petitioners), TIPCO, and SFP.

Scope of Review

The product covered by this review is canned pineapple fruit (CPF). CPF is defined as pineapple processed and/or prepared into various product forms, including rings, pieces, chunks, tidbits, and crushed pineapple, that is packed and cooked in metal cans with either pineapple juice or sugar syrup added. CPF is currently classifiable under subheadings 2008.20.0010 and 2008.20.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). HTSUS 2008.20.0010 covers CPF packed in a sugar-based syrup; HTSUS 2008.20.0090 covers CPF packed without added sugar (*i.e.,* juice-packed). Although these HTSUS subheadings are provided for convenience and for customs purposes, our written description of the scope is dispositive.

Partial Rescission of Antidumping Duty Administrative Review

On August 27, 1998, and October 30, 1998, Malee and Dole, respectively, timely filed to withdraw their requests for review. Because there were no other requests for review of either company, we have rescinded the review with respect to both Malee and Dole in accordance with 19 CFR 351.213(d)(1).

Fair Value Comparisons

We calculated export price (EP) and normal value (NV) based on the same methodology used in the preliminary results. We corrected clerical errors with respect to the calculation of SIFCO's normal value. *See* SIFCO's analysis memorandum dated December 6, 1999.

Cost of Production

We calculated the COP based on the same methodology used in the preliminary results. We corrected clerical errors with respect to SFP's and SIFCO's total manufacturing costs. *See* the respective companies' analysis memoranda dated December 6, 1999.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. As noted above, we received comments and rebuttal comments from the petitioners and two of the respondents (SFP and TIPCO).

Comments on General Issues

Comment 1—Exchange Rate Methodology

SFP objects to the exchange rate methodology used in the calculation of the preliminary results, arguing that it deviates from the Department's standard methodology as described in Policy Bulletin 96.1 (Policy Bulletin). *See* 61 FR 9434 (March 8, 1996). Contending that this methodology had no precedent at the time of the devaluation of the Thai baht, SFP says it was impossible for the company to anticipate the exchange rate to be used in the preliminary results and, therefore, it could not adjust its prices accordingly. SFP argues that one of the stated objectives in the Policy Bulletin is that a measure of predictability must exist, and that its preliminary dumping margin would have been much lower had the Department applied its standard exchange rate methodology.

Moreover, SFP appears to argue that the Department applied a special averaging period in this review. It acknowledges that the Department used a similar methodology in the final determinations of three recent antidumping investigations involving South Korea,[1] but contends that the 40-percent drop in the value of the Korean won at the end of 1997 greatly exceeds the 18-percent fall of the Thai baht in July 1997. SFP believes that the drop in the baht is not large enough to be classified as ''precipitous'' nor merit special treatment in the margin calculation.

Furthermore, SFP contends that the legal basis for the special averaging period used in *Rubber from Korea, SSP from Korea* and *SSRW from Korea* applies only to investigations, that section 777A(d)(1)(B) of the Act limits the comparison periods of administrative reviews to the corresponding calendar month, and that the Department cited no authority from the statute, the regulations, or prior cases as a basis for the methodology applied in the preliminary results.

For these reasons, SFP argues that for the final results, the Department should not adopt the method used in the preliminary results, but should use either the normal 40-day moving average or actual daily rates.

The petitioners also object to the exchange rate methodology used in the preliminary results, and request that the Department use the methodology outlined in the Policy Bulletin when calculating the final results.

First, the petitioners reiterate the need for predictability in the exchange rate methodology. Second, they argue, the Department's decision to deviate from its ''normal'' methodology in the preliminary results was improper because the Department's threshold for finding a drop in the value of a foreign currency to be ''precipitous'' has been much higher in other cases. Specifically, the petitioners point to the Department's recent finding that the 20-percent decline in the value of the New Taiwan dollar over the course of a 12-month period—a decline of a similar magnitude to that of the baht—was not large enough to justify any special action. (*See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Taiwan,* 64 FR 30592 (June 8, 1999) (*SSSS from Taiwan*).)

The petitioners also argue that in the preliminary results, the Department focused on a very narrow time period when examining the decrease in the value of the currency, *i.e,* the Department found that the baht declined 18 percent over a one-day period. If studied from a longer time perspective, they contend that it becomes clear that the decline took the form of a steady progression rather than a precipitous drop and, as such, the Department has no reason to adopt a special methodology. For the same reason, the petitioners disagree with SFP's proposal that the Department consider using the actual daily exchange

[1] *See Emulsion Styrene-Butadiene Rubber from the Republic of Korea,* 64 FR 14865 (March 29, 1999) (*Rubber from Korea*), *Stainless Steel Plate in Coils from the Republic of Korea,* 64 FR 15444 (March 31, 1999) (*SSP from Korea*), and *Stainless Steel Round Wire from Korea,* 64 FR 17342 (April 9, 1999) (*SSRW from Korea*)

rates as an alternative to its 40-day moving average benchmark methodology. The petitioners believe that the only justification for using the actual daily exchange rates would be if the Department determined that the Thai inflation rate was significant during the POR and, therefore, that it would be appropriate to apply the significant inflation margin methodology (*see* the comment on significant inflation, below).

TIPCO rejects the assertion that the Department erroneously deviated from its established exchange rate methodology in the preliminary results. The company argues that the 18-percent fall in the value of the baht was indeed a ''precipitous decline'' because of the magnitude of the drop, the short time period over which it occurred, and the fact that the baht did not rebound in any significant way. TIPCO rejects the petitioners' comparison with *SSSS from Taiwan,* stating that the 20-percent decline in the New Taiwan dollar was gradual and took place over a prolonged period of time. The Department's decision not to treat the fall of the New Taiwan dollar as precipitous is, therefore, not relevant for the present case, TIPCO says.

TIPCO also defends the Department's use of a stationary average as the benchmark during the ''post-precipitous period.'' According to TIPCO, this is simply an application of a modified benchmark similar to what was used in *Rubber from Korea* and *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From the Republic of Korea,* 64 FR 30664 (June 8, 1999). TIPCO believes that the Department correctly applied its exchange rate methodology as outlined in the Policy Bulletin. Although the Bulletin does not specify how the benchmark should be calculated after a precipitous decline of a currency, TIPCO argues that the use of a modified benchmark is fully consistent with the spirit of the Policy Bulletin.

Department's Position: Contrary to the arguments put forth by SFP and the petitioners, we believe that the methodology employed in the preliminary results was consistent with our exchange rate methodology used when a country's currency has experienced a ''precipitous drop.'' This methodology is outlined in Policy Bulletin 96.1, and in following our prescribed methodology, we ensured predictability in the exchange rates used in the preliminary results. We also note that we did not apply a special averaging period, as SFP has suggested. Furthermore, because we continue to find that the July 2, 1997, decline of the baht was ''precipitous and large'' within the meaning of the Policy Bulletin, we disagree with SFP's and the petitioners' suggestion that we should apply an exchange rate methodology using a 40-day moving average benchmark throughout the POR in the calculation of the final results of this review. However, as discussed below, we have modified our exchange rate methodology consistent with *Final Results of Antidumping Duty Administrative Review; Certain Welded Carbon Steel Pipes and Tubes from Thailand,* 64 FR 56759 (October 21, 1999) (*Pipes and Tubes from Thailand*).

As stated in the preliminary results, we made currency conversions into U.S. dollars in accordance with section 773A of the Act, based on exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent or more. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. *See* Policy Bulletin; *Preliminary Results* 64 FR at 30480; and *Preliminary Results of Antidumping Duty Administrative Review; Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands,* 64 FR 36841, 36843 (July 8, 1999).

As discussed in *Pipes and Tubes from Thailand* (64 FR at 56763), we continue to find that the drop of more than 18 percent in the dollar-baht exchange rate on July 2, 1997, from the previous day's rate, constitutes a ''large and precipitous'' decline. However, we do not find that the gradual decline of the baht that occurred over nearly seven months, from July 2, 1997, to January 31, 1998, qualifies as a ''large and precipitous'' drop for purposes of our exchange rate methodology.

In the preliminary results, we determined that, because a large and precipitous drop occurred on July 2, 1997, it was appropriate simply to begin on that day to use a new benchmark in order to avoid using daily rates from before the precipitous drop in calculating the benchmark for daily rates after the precipitous drop. Accordingly, for exchange rates between July 2 and August 27, 1997, for the preliminary results, we relied on the standard exchange rate model, but used as the benchmark rate a stationary average of the daily rates over this period. For these final results, however, we have changed the methodology applied to the period following July 2, 1997, using the methodology set forth in *Pipes and Tubes from Thailand.*

The gradual decline in the value of the baht over several months after July 2 was not so large and precipitous as to reasonably preclude the possibility that the exchange rate fluctuated from time to time during that period. Therefore, it is appropriate for the Department to use its standard methodology so as to ''ignore'' those fluctuations in accordance with section 773A of the Act. However, we also recognize that, following a large and precipitous decline in the value of a currency, a period may exist during which exchange rate expectations are revised, and it is unclear whether further declines are a continuation of the large and precipitous decline or merely fluctuations. Under the circumstances of this case, such uncertainty may have existed following the large, precipitous drop on July 2, 1997. Thus, we devised a simple test for identifying a point following a precipitous drop at which it is reasonable to think that exchange rate expectations have been sufficiently revised that it is appropriate to resume using the normal methodology. Beginning on July 2, 1997, we used only actual daily rates until the daily rates were not more than 2.25 percent below the average of the 20 previous daily rates for five consecutive days. At that point, we determined that the pattern of daily rates no longer reasonably precluded the possibility that they were merely ''fluctuating.'' (Using a 20-day average for this purpose provides a reasonable indication that it is no longer necessary to refrain from using the normal methodology, while avoiding the use of daily rates exclusively for an excessive period of time.) Accordingly, from the first of these five days, we resumed classifying daily rates as ''fluctuating'' or ''normal'' in accordance with our standard practice, except that we began with a 20-day benchmark and on each succeeding day added a daily rate to the average until the normal 40-day average was restored as the benchmark.

Applying this methodology in the instant case, we used daily rates from July 2, 1997, through August 4, 1997. We then resumed the use of our normal methodology through the end of the POR, starting with a benchmark based on the average of the previous 20 reported daily rates on August 5.

With respect to the petitioners' comment regarding *SSSS from Taiwan,* we note that in that case, unlike in the instant case, we found that changes in the exchange rate were moderate, and that while the value of the New Taiwan dollar relative to the U.S. dollar declined steadily, the overall decline was less than 20 percent over the entire period of investigation. In the instant case, the value of the baht declined a comparable amount in one day. Such a large decline over an extremely short period of time leads us to determine that the decline in the baht was ''precipitous.''

Comment 2—Significant Inflation

Referring to comments they submitted to the Department on May 10, 1999, the petitioners maintain that the inflation rate in Thailand was significant during the POR. On this basis, they urge the Department to apply its ''significant inflation calculation methodology'' by requiring the respondents to report their costs on a monthly basis, and by making price comparisons within the same calendar month rather than within the 90/60-day contemporaneity window. The petitioners claim that during most months of the POR, the monthly inflation rate in Thailand exceeded the monthly rate (*i.e.,* 1.87 percent) which, when compounded over a 12-month period, would yield an annual inflation rate of 25 percent, the Department's standard threshold for finding significant inflation. As further evidence of significant inflation, the petitioners point to the sharp drop in the value of the baht during the POR and the 85-percent increase in the price of tin, an input product for the canned fruit industry.

SFP and TIPCO reject the petitioners' argument, contending that Thailand's inflation rate did not exceed the Department's standard threshold rate of 25 percent during the POR. These two respondents argue that the Department, therefore, has no reason to change the calculation methodology used in the preliminary results.[2]

Furthermore, SFP points out that in the preliminary determination in *Stainless Steel Sheet and Strip in Coils from South Korea,* 64 FR 137 (January 4, 1999), the Department rejected an inflation analysis similar to the one proposed by the petitioners in this review. Finally, SFP dismisses the petitioners' argument regarding the increase in tin prices as being overly simplistic. *Department's Position:* Generally, when the annual inflation rate in the country under investigation exceeds 25 percent, the Department considers the inflation to be significant and uses a modified methodology. *See, e.g.,* Import Administration Antidumping Manual, Chapter 8, Section 15 (January 1998). Based on this practice, in a May 28, 1999, memorandum, we rejected the petitioners' request that cost data be reported on a monthly basis because we found that the rate of inflation in Thailand during the POR was not at a level such that it would warrant a special calculation methodology (*see* May 28, 1999, memorandum addressing this issue). Accordingly, we did not require the respondents to report their costs on a monthly basis for purposes of the preliminary results. We have continued to apply our standard methodology for the final results of this review because we have not received any new facts which would lead us to change our preliminary findings.

All parties filing case briefs made other arguments on the calculation of COP in the presence of significant inflation, in the event the Department would find that there was significant inflation during the POR. However, these comments are now moot as we have not found that significant inflation existed during the POR.

Comment 3—Treatment of Certain Tax Certificate Revenues

SFP and TIPCO object to the Department's preliminary decision not to adjust for the value of certain tax certificate revenues in the calculation of the COP. The two respondents state that upon exportation they received the tax certificates as a refund of an internal Thai tax imposed on materials. They assert that in the past, the Court of International Trade (CIT) and the Department, on remand, have determined that similar tax certificate programs constitute refunds upon exportation within the meaning of the statute (*see Camargo Correa Metais, S.A.* v. *United States,* No. 98–152, Slip. Op. at 5 (CIT 1998) (*Camargo*)). SFP and TIPCO maintain that the tax certificates are a result of the two companies' export activities and that the Department should adjust the COP for the value of these certificates as taxes remitted or refunded at the time of exportation.

SFP and TIPCO note that the Department requires that there be a sufficient link between the refund and the cost of materials before a cost adjustment is permitted (*see, e.g., Stainless Steel Round Wire From India; Final Determination of Sales at Less Than Fair Value,* 64 FR 17319 (April 9, 1999) (*Round Wire from India*)). According to the two respondents, there is sufficient evidence on the record of this proceeding that the calculation of the value of the tax certificates is based on the cost of material inputs. They argue that the Department's preliminary finding in this review—that the tax certificates are not sufficiently linked to material costs—is inconsistent with its determinations in the investigation and prior reviews of this case in which an adjustment of the COP by the value of the tax certificates was allowed.

According to SFP and TIPCO, the Department's preliminary finding is also inconsistent with its analysis of the tax program in several countervailing duty proceedings. Specifically, they point to *Certain Apparel from Thailand: Preliminary Results of Countervailing Duty Administrative Review,* 62 FR 46475 (September 3, 1997), in which the Department found that all inputs for which the respondents received duty drawback were physically incorporated in the exported product. SFP and TIPCO also note that in past cases, the Department has verified that the calculation of the rebate is tied to material inputs. They argue that the Department cannot have it both ways: denying a cost adjustment in an antidumping proceeding because the refund is ''not related to cost of production'' while at the same time, in a countervailing duty proceeding, finding that the tax certificate program includes only physically incorporated inputs. On this basis, both respondents urge the Department to change its preliminary results and allow an adjustment of COP by the value of the tax certificates they received during the POR.

The petitioners respond that while the statute may allow an adjustment to the COP for internal taxes on raw materials that are refunded upon exportation, such authority does not relate to the refund situation in this review. They note that at verification, the Department found no evidence that the revenue from the tax certificates is tied to a duty drawback scheme. The petitioners point out that the Department also verified that the value of the tax certificates is based simply on a percentage of a company's export revenue. On this basis, the petitioners argue, the Department was correct in not allowing any adjustments for the tax certificates.

Regarding *Round Wire from India,* the petitioners argue that this determination squarely supports the Department's decision to reject an offset to cost and an increase in U.S. price because in

[2] SFP's and TIPCO's rebuttal of the petitioners' comments is largely a restatement of the arguments submitted in their joint May 14, 1999, letter to the Department. On May 26, 1999, the Department also received a letter from KFC, objecting to the petitioners' May 10, 1999, comments.

Round Wire from India, the Department found that the refunds were unrelated to the customs duties paid to purchase raw materials for the manufacture of the subject merchandise.

The petitioners also argue that the respondents' reliance on *Camargo* is misplaced. They state that the decision in *Camargo* was that a tax credit, which constitutes a refund, should be deducted from a respondent's constructed value (CV). However, as determined in *Round Wire from India*, the import duties at issue in that case were not refunded upon exportation because the refunds were not directly based upon import duties paid on raw materials. Rather, they were based on the f.o.b. export price. The petitioners state that the facts in the current review are similar to those in *Round Wire from India* and that the Department, therefore, should reject the respondent's proposed offset to cost.

With regard to TIPCO's duty drawback claim, the petitioners state that this respondent has not made any effort to satisfy the Department's long-standing two-pronged test for duty drawback adjustments. The petitioners note that in order to add the duty drawback to U.S. price, the Department requires that a company show that the import duty and the rebate are directly linked to one another and, also, that there were sufficient imports to account for the duty drawback received for the export of the manufactured product. The petitioners argue that TIPCO has failed to show a direct link between any import duties and the rebate amount and that the Department, therefore, was correct in rejecting the company's duty drawback claim.

Department's Position: In determining whether a respondent can reduce its reported cost of manufacture by the amount of tax rebates it receives, the Department requires that the respondent show there is a link between claimed rebates and its cost of manufacture. *See Round Wire from India*, 64 FR at 17321. We acknowledge that we had accepted the respondents' claimed adjustment in previous segments of this proceeding, and had also examined this program in the context of several countervailing duty reviews, finding a link in those instances. However, based on information concerning the tax rebate program gathered during the verification of another respondent, Vita, and placed on the record of the instant review, we found no link between the tax rebates and the respondents' cost of manufacture that would allow us to treat this factor as a cost adjustment. Instead, the information we obtained at verification showed that the tax rebate is linked not to the cost of manufacture, but to exports, at a rate determined by the government and applicable to all companies that export. Based on this information, we issued a supplemental questionnaire to TIPCO, asking the company to provide us with information that would establish the requisite link. TIPCO failed to provide us with specific documentary evidence establishing this link. Further, SFP has not submitted any evidence for the record that establishes such a link. Accordingly, for the preliminary results we changed our previous treatment of this tax rebate program and disallowed it as a cost adjustment.

Although TIPCO and SFP continue to hold that such a link can be established, neither respondent has submitted evidence which demonstrates that the tax rebates can be tied to its cost of manufacture in a way that would permit us to apply the rebates as cost offsets. In fact, TIPCO has stated that it ''does not import directly any raw materials and does not pay directly any import duties in connection with its raw material purchases.'' (*See* TIPCO submission of April 22, 1999, page 1.) Based on the information on the record that we obtained at verification showing that the tax rebate is linked to exports and not to the cost of manufacture, and absent any record information in the instant review showing that such a link exists, we have continued to disallow the respondents' reported cost adjustment for these final results. Additionally, given that TIPCO has not shown that a link exists between the rebate program and any import duties it paid, it has failed the first prong of the Department's two-prong test for duty drawback adjustments and, thus, we have not made any adjustment to TIPCO's U.S. price.

Comment 4—Methodology for Allocating Fruit Costs

SFP and TIPCO contend that the Department improperly used a net realizable value (NRV) methodology to allocate fruit costs for purposes of calculating COP and CV. The respondents state, first, that the Court of Appeals for the Federal Circuit (CAFC) ruled in *IPSCO, Inc.* v. *United States*, 965 F.2d 1056 (Fed. Cir. 1992) (*IPSCO*), that value-based allocations of costs shared by co-products are not allowed under the antidumping law. Second, the respondents argue that the *IPSCO* ruling was applied specifically to this case by the Court of International Trade in *Thai Pineapple Public Co., Ltd.* v. *United States*, 946 F. Supp. 11 (CIT 1996) (*TIPCO*), where the CIT ruled in an appeal of the Department's final determination in the underlying investigation of this case that *IPSCO* applies to the allocation of fruit costs.

Regarding the specific cost allocation methodology to be used in place of the NRV methodology, these respondents argue that the Department should rely upon the weight-based fruit cost allocations submitted in their questionnaire responses. SFP and TIPCO maintain that their allocation methodologies are consistent with those reported by certain mandatory respondents in the original investigation and which were later adopted by the Department in the remand proceedings stemming from the less-than-fair-value investigation.

The petitioners reject the respondents' argument that NRV is not allowable in this case because of the CIT's decision in *TIPCO*. They support the Department's position that an NRV allocation methodology is both lawful and correct in order to allocate joint costs properly. The petitioners also state that the CIT decision is being reviewed by the CAFC and argue that the Department should, therefore, continue to use the NRV methodology.

Department's Position: Consistent with past segments of this proceeding, we have continued to allocate raw fruit costs incurred by the respondents using an NRV methodology which reasonably reflects the qualitative differences that exist between the joint raw materials used to produce CPF and other pineapple products, *e.g.,* pineapple juice. *See Preliminary Results,* 64 FR at 30478. We disagree with SFP's and TIPCO's contention that a weight-based methodology would be appropriate. As we stated in the final determination of the underlying investigation of this case, ''[w]e believe * * * that allocating the cost of pineapple evenly over the weight is not supportable. Using weight alone as the allocation criteria sets up the illogical supposition that a load of shells, cores, and ends costs just as much as an equal weight of trimmed and cored pineapple cylinders. Significantly, the use of physical weighting for allocation of joint costs, *i.e.,* in this case the cost of pineapple fruit, may have no relationship to the revenue-producing power of the individual products.'' *See Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit from Thailand,* 60 FR 29553, 29560 (June 5, 1995) (*Final Determination*). Because the parts of the pineapple are not interchangeable when it comes to CPF versus juice production, it would be unreasonable to value all parts equally by using a weight-based allocation methodology. Instead, as we

detailed in our *Preliminary Results,* we have used an NRV methodology for allocating fruit costs. This methodology compares historical cost and sales data for pineapple fruit products over a period encompassing several years prior to the antidumping proceeding and also includes data for markets where allegations of dumping have not been lodged. *Id.* Because NRV is commonly defined as the predicted selling price in the ordinary course of business less reasonably predictable costs of completion and disposal, we believe this methodology takes into account the qualitative differences between pineapple parts in the production process.

Furthermore, on July 28, 1999, the CAFC, while not ruling on the merits of the NRV methodology, gave deference to the Department in selecting and developing proper methodologies. *See the Thai Pineapple Public Co.* v. *United States,* 187 F. 3d 1362, 1366–67 (Fed. Cir., July 28, 1999) (*Thai Pineapple*). In this ruling, the CAFC reversed the CIT's decision in *TIPCO* to remand the case to the Department for recalculation of the antidumping duty margins using either a weight-based or a non-output price-based cost allocation methodology, and instead held that the Department's rejection of the respondents' weight-based methodology, in favor of the allocation methodology employed by the respondents in their books and records, was reasonable and supported by substantial evidence. *See Thai Pineapple* at 1367.

With respect to the respondents' reliance on *IPSCO,* the Department has consistently held throughout this proceeding that *IPSCO* is not controlling in this case. *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand,* 63 FR 7392, 7398 (February 13, 1998). In *Thai Pineapple,* the CAFC recognized that there are important differences between *IPSCO* and the present case. The CAFC held that:

> [P]ineapple fruit is not a homogeneous raw material like the raw material used to make the pipe in [*IPSCO*], and the production process is entirely different for the various pineapple products produced. The whole pineapple must be reduced to its various components—cored cylinders, cores, shells and ends—prior to entering the production processes for canned pineapple fruit and juice. Although the raw material was purchased as a whole, for a set price per unit of weight, the parts of the pineapple differ in their usefulness and value.

Thai Pineapple at 1369. On this basis, the CAFC concluded that the CIT improperly held that *IPSCO* is controlling precedent in this case. The Department, therefore, rejects the respondents' argument that *IPSCO* would prevent us from applying our NRV methodology in this case.

Comment on Company-Specific Issue

Comment 5—Calculation of TIPCO's Interest Expense Ratio

TIPCO requests that the Department recalculate the company's interest expense ratio for purposes of the final results of this review. In the preliminary results, the Department calculated this ratio by first subtracting TIPCO's interest income from its total interest expense, using data from the company's consolidated financial statements. Next, the Department divided the resulting net interest expense by the total cost of goods sold and applied this ratio to the cost of manufacturing. TIPCO argues that, in addition to interest income, the Department should also subtract dividend income that the company received during the POR from an associated company. TIPCO believes that this additional offset is justified because the associated company is not consolidated with TIPCO and, moreover, the dividend income is short-term in nature because TIPCO is not required to maintain its holdings in the associated company for any specific length of time.

The petitioners argue that, under the Department's practice, dividend income is not an allowable offset to interest expenses, which may be reduced only by interest income earned on short-term investments of working capital. The petitioners contend that in previous cases, the Department has not allowed companies to offset their financial expenses with income earned on investments such as dividend income (*see Silicon Metal from Brazil: Notice of Final Results of Antidumping Duty Administrative Review,* 64 FR 6305 (February 9, 1999) and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From The Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review,* 56 FR 31734 (July 11, 1991)).

Department's Position: We agree with the petitioners. As stated in the above-mentioned cases, the Department includes only short-term interest income as an offset to interest expenses. This practice was upheld by the CIT in *Gulf States Tube Division of Quanex Corp.* v. *United States,* 981 F. Supp. 630 (CIT 1997) and *NTN Bearing Corp.* v. *United States,* 905 F. Supp. 1083, 1097 (CIT 1995) in which the CIT held that, to qualify for an offset, interest income must be related to the ''ordinary operations of the company.'' As the Department stated in the *Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from India,* 63 FR 72246, 72252 (December 31, 1998), it allows a company to offset its financial expense with the short-term interest income earned on working capital accounts maintained to support its daily cash requirements (*e.g.,* payroll, suppliers, etc.). However, the Department does not allow a company to offset its financial expense with the income earned from investment activities (*e.g.,* long-term interest income, capital gains, dividend income).

Final Results of Review

As a result of our review, we determine that the following percentage weighted-average margins exist for the period July 1, 1997, through June 30, 1998:

Manufacturer/exporter	Margin (percent)
TIPCO	9.87
SFP	3.25
Vita	17.53
KFC	3.57
SIFCO	3.32

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific assessment rates by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise. We will direct the Customs Service to assess antidumping duties by applying the assessment rate to the entered value of the merchandise.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a) of the Act: (1) For the companies named above, the cash deposit rate will be the rate listed above, (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate

will be that established for the manufacturer of the merchandise in these final results of review or in the most recent segment of the proceeding in which that manufacturer participated; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 24.64 percent, the all others rate established in the less-than-fair-value investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and in the subsequent assessment of double antidumping duties.

This notice also is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 6, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–32223 Filed 12–10–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–807]

Certain Carbon Steel Butt-Weld Pipe Fittings From Thailand; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On August 6, 1999, the Department of Commerce (the Department) published preliminary results of an administrative review of the antidumping duty order on certain carbon steel butt-weld pipe fittings (pipe fittings) from Thailand. This review covers Thai Benkan Corporation (TBC), a manufacturer/exporter of this merchandise to the United States, during the period July 1, 1997, through June 30, 1998. We preliminarily determined that sales of the subject merchandise have been made below normal value. We gave parties an opportunity to comment on our preliminary results. No comments were submitted to the Department. Additionally, we have changed our exchange rate methodology for a portion of the period covered by this review. However, this modification has not affected our results. Consequently, our preliminary results remain unchanged. We will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the export price and the normal value.

EFFECTIVE DATE: December 13, 1999.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Tom Futtner, Antidumping/Countervailing Duty Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–4114 or 482–3814, respectively.

THE APPLICABLE STATUTE AND REGULATIONS: Unless otherwise indicated, all citations to the statute are references to the provisions as of January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act), as amended, by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations refer to the regulations codified at 19 CFR Part 351 (April 1998).

SUPPLEMENTARY INFORMATION:

Background

On July 6, 1992, the Department published in the **Federal Register** an antidumping duty order on pipe fittings from Thailand (57 FR 29702). On July 30, 1998, the respondent requested, in accordance with section 351.213(b) of the Department's regulations, an administrative review of the antidumping duty order on pipe fittings from Thailand covering the period July 1, 1997, through June 30, 1998. We published a notice of initiation of the review on August 27, 1998, (63 FR 45796). On September 15, 1998, the Department sent an antidumping questionnaire to TBC. The Department received questionnaire responses in October and November of 1998.

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of preliminary results if it determines that it is not practicable to complete the review within the statutory time limit. On March 10, 1999, the Department published notice of extension of time limit for the preliminary results of this case (64 FR 11824). On May 7, 1999, we issued a supplemental questionnaire and received a response to that questionnaire on May 27, 1999. On August 6, 1999, (64 FR 42902), the Department published preliminary results of the administrative review. We gave interested parties an opportunity to comment on the preliminary results. We received no comments. The Department has now completed this administrative review in accordance with section 751(a) of the Act.

Scope of the Review

The product covered by this order is certain carbon steel butt-weld pipe fittings, having an inside diameter of less than 14 inches, imported in either finished or unfinished form. These formed or forged pipe fittings are used to join sections in piping systems where conditions require permanent, welded connections, as distinguished from fittings based on other fastening methods (e.g., threaded, grooved, or bolted fittings). Carbon steel pipe fittings are currently classified under subheading 7307.93.30 of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive. The review covers TBC and the period of review (POR) July 1, 1997, through June 30, 1998.

Currency Conversion

Effective July 2, 1997, the Thai government ended its restriction on the movement of the dollar-baht exchange rate, thereby allowing the rate to be determined by supply and demand. Our analysis of Federal Reserve exchange rate data shows that the value of the Thai baht in relation to the U.S. dollar fell on July 2, 1997, by about 18 percent from the previous day and did not rebound significantly in a short period of time. We have already concluded in another proceeding involving Thailand that this drop constitutes a ''precipitous and large'' decline for purposes of our exchange rate methodology. For a more detailed discussion of the methodology used for periods of ''precipitous and

large'' exchange rate declines, please refer to *Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review,* 64 FR 56759 (October 21, 1999) (*Pipes and Tubes from Thailand*). For these final results of review, we incorporated the same methodology used in *Pipes and Tubes from Thailand*. However, the results have not been affected. All of TBC's U.S. sales took place during specific months in which we relied upon our ''standard'' 40-day average benchmark.

Final Results of the Review

As a result of this review, we determine that the following weighted-average dumping margin exists for the period July 1, 1997, through June 30, 1998:

Manufacturer/exporter	Weighted-Average Margin (percent)
Thai Benkan Corporation, Ltd.	0.94

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties. For assessment of EP sales we calculated a per-unit customer or importer-specific assessment rate by aggregating the dumping margins calculated for all U.S. sales to each customer/importer and dividing this amount by the total quantity of those sales.

Furthermore, the following cash deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of pipe fittings from Thailand entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate indicated above; (2) for exporters not covered in this review, but covered in the original less than fair value (LTFV) investigation or a previous review, the cash deposit rate will continue to be the company-specific rate published in the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews or the original LTFV investigation, the cash deposit rate will be 39.10 percent, the ''All Others'' rate from the LTFV investigation (57 FR 29702, July 6, 1992). These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section Sec. 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 771(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 1677f(i)(1)).

Dated: December 6, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–32222 Filed 12–10–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–008]

Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On June 7, 1999, the Department of Commerce (the Department) published the preliminary results of review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Taiwan (64 FR 30306). The review covers four manufacturer/exporters of the subject merchandise to the United States and the period May 1, 1997 through April 30, 1998. The manufacturers covered are Yieh Hsing Enterprise Co. Ltd. (Yieh Hsing), Yieh Loong Co., Ltd. (Yieh Loong), Kao Hsing Chang Iron & Steel Corporation (KHC) and Yun Din Steel Co., Ltd. (Yun Din).

EFFECTIVE DATE: December 13, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam or Michael J. Heaney, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3019 or 482–4475, respectively.

Applicable Statute. Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations, codified at 19 CFR Part 351 (1998).

SUPPLEMENTARY INFORMATION:

Background

On June 7, 1999 the Department published the preliminary results of the administrative review, and rescinded the review with respect to Far East Machinery Co., Ltd., Sheng Yu Steel Co., Ltd., and Tai Feng Industries. *Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Partial Recission of Review* 64 FR 30306 (''Preliminary Results''). We received comments from petitioners and respondents Yieh Hsing and KHC. We received rebuttal comments from the petitioners and KHC. The Department has now completed this review in accordance with section 751 of the Act.

Scope of the Review

Imports covered by this review are shipments of certain circular welded carbon steel pipes and tubes. The Department defines such merchandise as welded carbon steel pipes and tubes of circular cross section, with walls not thinner than 0.065 inch and 0.375 inch or more but not over 4½ inches in

outside diameter. These products are commonly referred to in the industry as ''standard pipe'' and are produced to various American Society for Testing Materials specifications, most notably A–53, A–120, or A–135. Standard pipe is currently classified under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7306.30.5025, 7306.30.5032, 7306.30.5040, and 7306.30.5055. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Non-Responding Companies

Yun Din and Yieh Loong did not respond to our requests for information. For the reasons discussed in the notice of preliminary results, we have assigned these companies, as facts available, the highest rate in any review of this order, 14.08%. *See* Preliminary Results at 64 FR 30307.

Methodology

Except for the corrections of clerical errors discussed below we did not change our method of analysis from the preliminary results. *See id.* at 30307–30309. Thus, we applied the same methods with regard to price and cost, and observed the requirements of section 773(a)(1)(B)(i) of the Act concerning level-of-trade analysis.

Comments: KHC

Comment 1: Petitioners argue with respect to KHC that the Department should reject the cost-of-production (COP) offset claimed by KHC unless ''heads and tails'' (pipe-end trimmings) were included in the cost of raw input submitted by KHC. KHC counters that these items were in fact included in its submitted costs.

Department's Position: There is no record evidence to indicate that KHC omitted ''head and tails'' from its cost calculations. Accordingly, we have allowed KHC's claimed offset.

Comment 2: KHC argues that the Department's application of facts available in the preliminary results to COP and CV data for certain product models which KHC did not produce during the POR is inappropriate. KHC contends that it submitted data for alternate models which are similar, and that the Department can and should use this alternate data, rather than resorting to facts available. In its case brief, KHC argues that it did not submit costs data for the sales in question because ''* * * it would have been virtually impossible, given the schedule, for KHC to use pre-POR cost data to determine actual costs; * * *.'' KHC argues that the Department intended to use the costs of similar home market models, and stated this intention in its analysis memorandum. KHC argues that the Department accepted similar substitute model data numbers from the other respondent in the case. KHC also argues that the Department is incorrect to conclude that KHC ''failed to provide any costs of certain models'' since it provided costs data of similar products.

KHC further argues that, assuming the use of facts available is appropriate, the Department should not use as facts available the highest reported costs among all costs reported for all categories of products, because to do so results in the unintended use of adverse facts available. The Department should, KHC argues, revise its calculation programs in the final results to ensure that no adverse facts available are applied to KHC's cost data.

Petitioners argue that if the Department recalculates the margin applicable to KHC it should use values which petitioners put forward as facts available data for material, labor, fixed and variable overhead, interest and general & administrative expenses.

Department's Position: Where KHC failed to provide cost data, we used the highest average costs of models for which KHC did provide data. The facts which we used constitute partial adverse facts available, and are also the least adverse facts available on the record. We did not use petitioners' suggested alternative values because petitioners did not provide any supporting calculations or rationales, and because we were in possession of verified average cost data from KHC's submission. For the reasons below we disagree with each of respondent's arguments.

KHC withheld information requested by the Department, then belatedly offered different information, which did not fulfill the request, in an unacceptable format. Section 776(a)(2) of the Act provides in part that if an interested party withholds information that has been requested or fails to provide such information in a timely manner or in the form or manner requested, subject to section 782 (d) and (e), the Department shall use facts otherwise available in reaching the applicable determination.

The Department's July 10, 1998 questionnaire stated at D–IV–A that ''(t)he COP file should contain unit cost information for the foreign like product manufactured for sale in the foreign market.'' Section D also contained the instruction: ''If you have any questions regarding the appropriate cost calculation period for the merchandise under review, notify the Department in writing *before* preparing your response to this section of the questionnaire'' (emphasis in original). Appendix II of the questionnaire specified the computer-readable format required. The cover letter for the questionnaire further stated: ''If you have any questions about these or any other matters, please contact the official in charge.'' *See Letter from Department to KHC,* July 10, 1998, page 1.

Both supplemental cost questionnaires (January 21 and February 17, 1999) requested information concerning models with missing product quantity data, which are the same models as those with missing costs. KHC did not consult the Department on this matter, and did not explain its omission of quantity or cost data until its April 13, 1999 addendum to its April 12, 1999 supplemental response, where it mentioned in passing that the models were not produced during the POR.

KHC was in a position either to provide the requested data or consult with the Department on acceptable alternative approaches, but did neither. By repeatedly choosing not to respond adequately to repeated requests for the data, as outlined below, KHC failed to cooperate to the best of its ability. The Department may therefore use an inference that is adverse to the interests of KHC in selecting among the facts otherwise available, per section 776(b) and well-established Department practice. *See*, for example, *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan* (64 FR 24329, 24348, May 6, 1999).

KHC's April 13, 1999 list of alternates was unusable for four main reasons. First, it was not the information that we requested. Second, KHC provided no supporting documentation or worksheets to establish that its suggested alternate models were indeed the most similar, and were not models the use of which would result in a lower margin. This was a significant omission since the codes are complex, covering five product attributes and extending to well over 100 pairs of sixteen-digit model numbers. Many different models could potentially represent similar models to those for which KHC failed to provide quantity and cost information. Third, even assuming the Department determined that it should use the list KHC proffered, the list did not include a computer-compatible version, as required by the Department's questionnaire, but merely an unclear set

of hand-written notes which had been faxed and photocopied multiple times. Fourth, it is the responsibility of the respondent to submit its cost data in a useable format to the Department and with the specified documentation and worksheets. *See Sugiyama Chain Co. Ltd. et* v. *United States*, 797 F. Supp. 989, 994–995 (CIT 1992). KHC's tactics amounted to an improper attempt to shift the task of compiling and categorizing its alternate home market models to the Department.

KHC's argument that it would have been ''impossible'' to supply the requested data is unpersuasive: KHC never asked for assistance or for more time to collect and report the cost data in question. Instead, KHC chose to ignore both the instructions in the questionnaire, already cited, and basic statutory guidelines: section 782(c)(1) of the Act requires that an interested party promptly notify the Department if it is unable to submit information in the form and manner requested, and that it provide a ''full explanation and suggested alternate forms'' in which it is able to provide the information. KHC provided no such notification or explanation.

KHC's belated claim concerning lack of time is in any case belied by the facts. The Department extended this review by 4 months on January 6, 1999 (64 FR 860), granted each of KHC's four requests for extensions of deadlines to submit responses pertaining in whole or in part to the cost section of our questionnaire, and accepted KHC's April 13, 1999 addendum to its second supplemental cost response, the due date for which was April 12. *See* letters from the Department to KHC, granting extensions, November 17, 1998 (Section D Cost Response deadline moved from November 19 to December 4), February 3, 1999 (supplemental cost response deadline moved from February 5 to February 16), March 29, 1999 (second supplemental cost response deadline moved from April 1 to April 9), and April 8, 1999 (second supplemental cost response deadline moved again, from April 9 to April 12). KHC thus received approximately six additional weeks in which to file its cost responses. During this time KHC never mentioned the need to retrieve pre-POR cost data. KHC only raised the timing problem in its case brief, after the period for submission of new factual information had closed. Moreover, KHC has failed to demonstrate why providing actual cost data from a few months prior to the POR would be unreasonably burdensome. The Department routinely requests and receives sales and cost data from the months preceding a POR (see *Antidumping Questionnaire* I–3, I–4, ''Contemporaneous Sales'').

Concerning the Department's use of alternate model data from another respondent, the facts are not analogous. Yieh Hsing's alternative model codes were only 4 in number, and were submitted in a clear, timely, coherent response, duly accompanied by a computer-readable version.

We also disagree with KHC's assertions that use of its highest product cost is unduly punitive and that the Department intended to apply some other less adverse facts available. KHC misreads the analysis memo, which simply states, ''For models in which KHC failed to provide the material, labor, fixed factory overhead, variable factory overhead information, interest expenses, and general and administrative expenses, necessary to complete our analysis, we used the costs of similar home market models.'' This statement accurately describes the Department's methodology. The Preliminary Results notice was more specific in this regard, stating: ''Because KHC failed to provide any costs for certain models, as facts available we used the highest average cost for the same category of product.'' Thus, the Department clearly stated its exact intent with respect to which facts available it intended to apply for the unreported data.

We note that the facts we used are only partial adverse facts available and are the least adverse verified facts available on the record which would not reward non-compliance. Rather than applying the highest calculated margin for the sales with unreported cost data, we simply inserted the highest costs in order to complete the costs test and leave the price-to-price analysis intact. We have relied upon KHC's own verified data as our source of facts available. Use of costs other than those we have used, such as KHC's overall, non-product specific average costs, could reward KHC for failure to fully cooperate in this review because use of such data could potentially result in a lower margin than would have resulted from use of KHC's actual costs. Our application of partial adverse facts available in this manner is consistent with established practice because it is based on verified data and is sufficiently adverse to induce KHC's cooperation in future reviews. Accordingly, for these final results, we have continued to use as partial facts available KHC's highest costs where KHC failed to report actual costs.

Comment 3: KHC argues that although the verification report suggests, on the basis of statements by KHC officials, that certain packing costs were underreported, a close review of the data on the record show that the costs in question were fully reported. Petitioners did not comment on this issue.

Department's Position: Notwithstanding the doubts and confusion raised at verification, the evidence indicates that the costs in question were not underreported. Therefore we have not altered the packing costs for these final results.

Yieh Hsing

Comment 4: With regards to Yieh Hsing, petitioners argue that the Department should convert the reported per-ton packing expense for U.S. sales to a per-kilo basis prior to its inclusion in constructed value, and also that the Department should put constructed value on a per-ton basis prior to the calculation of foreign unit price in dollars.

Department's Position: We agree with petitioners and have adjusted our final results accordingly.

Comment 5: Yieh Hsing argues that the margin announced in the preliminary results contains an incorrectly located decimal point.

Department's Position: This is a moot point, because the margin has changed.

Yun Din

Comment 6: Concerning Yun Din, petitioners argue that, as it did in the preliminary results, the Department should continue to apply the highest rate available to this company because of the company's failure to cooperate with the Department to the best of its ability following the Department's requests for information.

Department's Position: With regard to Yun Din, we agree with petitioners and have maintained our methodology from the preliminary results.

Final Results of Review

As a result of this review, we determine that the following margins exist:

Manufacturer/exporter	Period	Margin (percent)
Yieh Hsing	5/1/97–4/30/98	1.40
KHC	5/1/97–4/30/98	14.08
Yun Din	5/1/97–4/30/98	14.08
Yieh Loong	5/1/97–4/30/98	14.08

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall issue appraisement instructions directly to the Customs Service. For assessment purposes, we have calculated importer-specific duty assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of sales examined. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of certain circular welded carbon steel pipes and tubes from Taiwan entered, or withdrawn from the warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act: (1) For the companies named above, the cash deposit rates will be the rates listed above; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of these reviews or the LTFV investigation; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews or the original fair value investigation, the cash deposit rate will be 9.7%, the ''all others'' rate established in the LTFV investigation.

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with sections 351.305 and 351.306 of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 6, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–32228 Filed 12–10–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–859–801]

Notice of Postponement of Preliminary Antidumping Duty Determination: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Slovakia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 13, 1999.

FOR FURTHER INFORMATION CONTACT: LaVonne Jackson, Doug Campau, or Abdelali Elouaradia, Office V, DAS Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–3003, 482–1784, or (202) 482–0498, respectively.

POSTPONEMENT OF PRELIMINARY DETERMINATION: The Department of Commerce (the Department) is postponing the preliminary determination in the antidumping duty investigation of cold-rolled, flat-rolled, carbon-quality steel products from Slovakia. The deadline for issuing the preliminary determination in this investigation is now December 28, 1999.

On June 21, 1999, the Department initiated an antidumping investigation of cold-rolled, flat-rolled, carbon-quality steel products from Slovakia. *See Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Argentina, Brazil, the People's Republic of China, Indonesia, Japan, the Russian Federation, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela,* 64 FR 34194 (June 25, 1999). The notice stated that the Department would issue its preliminary determinations no later than 140 days after the date of initiation (*i.e.,* November 8, 1999). The Department issued preliminary determinations in the cases involving Argentina, Brazil, Japan, the Russian Federation, South Africa, Thailand and Venezuela on November 1, 1999. On November 5, 1999, the Department postponed the deadline for the preliminary determinations for the cases involving Taiwan, Indonesia, China and Turkey until December 8, 1999.

On October 13, 1999, pursuant to section 771(18)(B) of the Tariff Act of 1930, as amended (''the Act''), the Department revoked the non-market economy status of Slovakia. As a result, the Department discontinued the use of its non-market economy methodology in this investigation, and has proceeded using its market economy methodology. On October 19, 1999, in accordance with section 773(c)(1)(B) of the Act, the Department concluded that this case is extraordinarily complicated. Consequently, the Department postponed the date of the preliminary determination in this investigation until December 8, 1999. *See Notice of Postponement of Preliminary Antidumping Duty Determination: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Slovakia,* 64 FR 57482 (October 27, 1999). On November 10, 1999, the Department initiated a below-cost sales investigation, requiring the acquisition and analysis of additional complex data. Consequently, the Department has concluded that additional time is

necessary to issue the preliminary determination. Therefore, in light of the fact that parties to this proceeding have been cooperating, pursuant to section 733(c)(1) of the Act, the Department is postponing the deadline for issuing this determination until December 28, 1999.

This extension is in accordance with section 733(c) of the Act and 19 CFR 351.205(b)(2).

Dated: December 6, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–32103 Filed 12–10–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–812]

Notice of Initiation of Changed Circumstances Antidumping Duty Administrative Review: Dynamic Random Access Memory Semiconductors From Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Changed Circumstances Antidumping Duty Administrative Review.

SUMMARY: In accordance with 19 CFR 351.216, Micron Technology Inc. (''Micron''), a U.S. producer of dynamic random access memory semiconductors (''DRAMs'') and the petitioner in the less-than-fair-value (''LTFV'') investigation of DRAMs from Korea, requested a changed circumstances review pursuant to section 751(b) of the Tariff Act of 1930, as amended (''the Act''). In response to this request, the Department of Commerce (''the Department'') is initiating a changed circumstances review on DRAMs from Korea.

EFFECTIVE DATE: December 13, 1999.

FOR FURTHER INFORMATION CONTACT: Ron Trentham or Tom Futtner, AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–6320 or (202) 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise stated, all citations to the Act are references to the provisions as of January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all references to the regulations of the Department are to 19 CFR part 351 (1998).

Background

On May 10, 1993, the Department published in the **Federal Register** (58 FR 27250) the antidumping duty order on DRAMs from Korea. On November 12, 1999, Micron submitted a letter stating that LG Semicon Co., Ltd., (''LG Semicon'') and Hyundai Electronics Industries Co., Ltd., (''Hyundai''), two Korean DRAMs producers, merged on October 14, 1999, thus creating a new business entity—Hyundai MicroElectronics Co., Ltd. Micron further states that since both DRAM producers are subject to the DRAM antidumping duty order, the newly established entity should receive a blended cash deposit based on the weighed average dumping margins that the Department will establish for each of the respondents in the impending final results of the 1997–1998 (fifth) administrative review of the order.

In its November 12, 1999 letter, the petitioner also requested that the Department issue the final results of the changed circumstances review on an expedited schedule, to coincide with release of the final results of the fifth administrative review of the order.

Scope of Review

Imports covered by the review are shipments of DRAMs from Korea. Included in the scope are assembled and unassembled DRAMs. Assembled DRAMs include all package types. Unassembled DRAMs include processed wafers, uncut die, and cut die. Processed wafers produced in Korea, but packaged or assembled into memory modules in a third country, are included in the scope; wafers produced in a third country and assembled or packaged in Korea are not included in the scope.

The scope of this review includes memory modules. A memory module is a collection of DRAMs, the sole function of which is memory. Modules include single in-line processing modules (''SIPs''), single in-line memory modules (''SIMMs''), or other collections of DRAMs, whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules which contain additional items which alter the function of the module to something other than memory, such as video graphics adapter (''VGA'') boards and cards, are not included in the scope. The scope of this review also includes video random access memory semiconductors (''VRAMS''), as well as any future packaging and assembling of DRAMs; and, removable memory modules placed on motherboards, with or without a central processing unit (''CPU''), unless the importer of motherboards certifies with the Customs Service that neither it nor a party related to it or under contract to it will remove the modules from the motherboards after importation. The scope of this review does not include DRAMs or memory modules that are reimported for repair or replacement.

The DRAMS and modules subject to this review are currently classifiable under subheadings 8471.50.0085, 8471.91.8085, 8542.11.0024, 8542.11.8026, 8542.13.8034, 8471.50.4000, 8473.30.1000, 8542.11.0026, 8542.11.8034, 8471.50.8095, 8473.30.4000, 8542.11.0034, 8542.13.8005, 8471.91.0090, 8473.30.8000, 8542.11.8001, 8542.13.8024, 8471.91.4000, 8542.11.0001, 8542.11.8024 and 8542.13.8026 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the scope of this review remains dispositive.

Initiation of Changed Circumstances Antidumping Duty Review

In accordance with section 751(b) of the Act, the Department is initiating a changed circumstances review to determine whether Hyundai MicroElectronics Co., Ltd., is the successor-in-interest to LG Semicon and Hyundai for purposes of determining antidumping duty liability. In making such a successor-in-interest determination, the Department typically examines several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See Brass Sheet and Strip from Canada: Notice of Final Results of Antidumping Administrative Review,* 57 FR 20460 (May 13, 1992) (''*Canadian Brass*''). While no one or a combination of these factors will necessarily provide a dispositive indication, the Department will generally consider the new company to be the successor to a previous company if its resulting operation is not materially dissimilar to that of its predecessor. *See Industrial Phosphoric Acid from Israel: Final Results of Changed Circumstances Review,* 59 FR 6944 (February 14, 1994) and *Canadian*

Brass, 57 FR 20460. Thus, if the record evidence, subject to verification, demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the former company, the Department may assign the new company a cash deposit rate of its predecessor. *See e.g. Fresh and Chilled Atlantic Salmon from Norway: Final Results of Changes Circumstances Antidumping Duty Administrative Review,* 64 FR 9979, 9980 (March 1, 1999). In addition, in the event that the Department concludes that expedited action is warranted, 19 CFR 351.221(c)(3)(ii) permits the Department to combine the notices of initiation and preliminary results.

The Department concludes that it would be inappropriate to expedite this action pursuant to 19 CFR 351.221(c)(3)(ii) by issuing a preliminary determination prior to conducting an investigation in the instant case. The Department may need additional information regarding the Hyundai-LG Semicon merger which would make expedited action impracticable. Therefore, the Department is not issuing preliminary results of its changed circumstances antidumping duty administrative review at this time.

The Department will publish in the **Federal Register** a notice of preliminary results of changed circumstances antidumping duty administrative review in accordance with 19 CFR 351.221(c)(3)(i), which will set forth the factual and legal conclusions upon which our preliminary results are based, and a description of any action proposed based on those results. Interested parties may submit comment for consideration in the Department's preliminary results not later than 20 days after publication of this notice. Responses to those comments may be submitted no later than 10 days following submission of the comments. All written comments must be submitted in accordance with 19 CFR 351.303, and must be served on all interested parties on the Department's service list in accordance with 19 CFR 351.303. The Department will publish in the **Federal Register** the final results of the changed circumstances review within 270 days after the date on which the changed circumstances review is initiated, in accordance with 19 CFR 351.216(e). This initiation of review notice is in accordance with sections 751(b) and 777(i)(1) of the Act.

Dated: December 6, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–32227 Filed 12–10–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–805]

Notice of Final Results of Antidumping Duty Administrative Review: Certain Pasta from Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 9, 1999, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on certain pasta from Turkey. This review covers shipments to the United States by two respondents during the period of review July 1, 1997, through June 30, 1998.

For our final results, we have found no margin or a de minimis margin for the two respondents.

EFFECTIVE DATE: December 13, 1999.

FOR FURTHER INFORMATION CONTACT: John Brinkmann, Office of AD/CVD Enforcement, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4126.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations refer to the regulations codified at 19 CFR Part 351 (1998).

Case History

This review covers two manufacturers/exporters of merchandise subject to the antidumping duty order on certain pasta from Turkey: Pastavilla Kartal Makarnacilik Sanayi ve Ticaret A.S. (Pastavilla) and Maktas Makarnacilik ve Tic. A.S. (Maktas).

On August 9, 1998, the Department published the preliminary results of this review. *See Notice of Preliminary Results of Antidumping Duty Administrative Review: Certain Pasta from Turkey,* 64 FR 43157 (August 9, 1999) (*Preliminary Results*). On September 15, 1999, we received a case brief from Maktas. We did not receive any rebuttal briefs, and no public hearing was requested.

Scope of Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (*HTSUS*). Although the *HTSUS* subheading is provided for convenience and customs purposes, the written description of the merchandise under order is dispositive.

Scope Rulings

The Department has issued the following scope ruling to date:

(1) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances may be within the scope of the antidumping and countervailing duty orders. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pound four ounces is within the scope of the antidumping and countervailing duty orders. *See Memorandum from John Brinkmann to Richard Moreland,* dated May 24, 1999.

Price Comparisons

We calculated constructed export price (CEP), export price (EP), and normal value based on the same methodology used in the *Preliminary Results,* with the following exception.

Maktas

We did not make a claimed billing adjustment for foreign currency exchange gain. *See* Comment 1.

Cost of Production

As discussed in the *Preliminary Results,* we conducted an investigation to determine whether Maktas and Pastavilla made home market sales of the foreign like product during the period of review (''POR'') at prices below their cost of production (''COP'') within the meaning of section 773(b)(1) of the Act.

We calculated the COP for these final results following the same methodology as in the preliminary results. For both Maktas and Pastavilla, we found 20 percent or more of the sales of a given product during the 12 month period were at prices less than the weighted-average COP for the POR. Thus we determined that these below-cost sales have been made in ''substantial quantities'' within an extended period of time, and that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(B), (C), and (D) of the Act. Therefore, for purposes of these final results, we disregarded these below-cost sales and used the remaining sales as the basis for determining normal value, pursuant to section 773(b)(1) of the Act.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. As noted above, we received a case brief from Maktas.

Comment 1: Billing Adjustment

Maktas argues that for the sales to one of its customers, the Department incorrectly deducted a billing adjustment from Maktas' U.S. price in the preliminary results. Maktas contends that this billing adjustment reflects a foreign exchange gain based on a payment term, and therefore, should be added to its U.S. price.

DOC Position: We agree with Maktas, in part, that we should not deduct the ''billing adjustment'' from Maktas' U.S. price. However, we disagree with Maktas that this billing adjustment should be added to its U.S. price. For these final results, this alleged ''billing adjustment'' was neither subtracted from nor added to Maktas' U.S. price. Rather, because the sale price was originally set in U.S. dollars, we have used the agreed upon U.S. dollar price per ton for these final results. Since no currency conversion is involved under our methodology, the billing adjustment in question becomes a moot issue. *See* memorandum from Cindy Robinson to the file, *Analysis Memorandum for Maktas Makarnacilik ve Tic. A.S.,* December 7, 1999.

Final Results of Review

As a result of our review, we find that the following margins exist for the period July 1, 1997, through June 30, 1998:

Manufacturer/exporter	Margin (percent)
Maktas Makarnacilik Sanayi ve Tic. A.S..	0.29 (de minimis)
Pastavilla Kartal Makarnacilik Sanayi Ticaret A.S..	0.00

The Department shall determine, and the United States Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212 (b)(1), we have calculated importer-specific assessment rates by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise. We will direct the United States Customs Service to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise entered during the POR, except where the assessment rate is zero or de minimis (*see* 19 CFR 351.106(c)(2)).

Cash Deposit Requirements

To calculate the cash-deposit rate for each producer and/or exporter included in this administrative review, we divided the total dumping margins for each company by the total net value for that company's sales during the review period.

Furthermore, the following cash deposit requirements will be effective for all shipments of the subject merchandise from Turkey entered, or withdrawn from warehouse, for consumption upon publication of these final results of administrative review, as provided by section 751(a)(2)(A) and (C) of the Act: (1) The cash deposit rate for Maktas and Pastavilla will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 51.49 percent, the ''all others'' rate established in the LTFV investigation. *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey,* 61 FR 38545 (July 24, 1996).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and in the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply is a violation of the APO.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 7, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–32226 Filed 12–10–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–847]

Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice.

SUMMARY: On August 6, 1999, the Department of Commerce published the preliminary results of its first administrative review of the antidumping duty order on persulfates from the People's Republic of China. *See Persulfates from the People's*

Republic of China: Preliminary Results of Antidumping Duty Administrative Review, and Partial Rescission of Administrative Review, 64 FR 42912 (August 6, 1999). The period of review is December 27, 1996, through June 30, 1998. Based on our analysis of comments received, we have made changes to the margins calculated for purposes of the preliminary results, including corrections of certain clerical errors. The final weighted-average dumping margins are listed below in the section entitled ''Final Results of Review.''

We have determined that sales have been made below normal value during the period of review. Accordingly, we will instruct the Customs Service to assess antidumping duties based on the difference between export price and normal value.

EFFECTIVE DATE: December 13, 1999.

FOR FURTHER INFORMATION CONTACT: Sunkyu Kim or James Nunno, AD/CVD Enforcement Group I, Office II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2613 or (202) 482–0783, respectively.

APPLICABLE STATUTE AND REGULATIONS: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations at 19 CFR Part 351 (April 1998).

SUPPLEMENTARY INFORMATION:

Background

On August 6, 1999, the Department published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on persulfates from the People's Republic of China (PRC). *See Persulfates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, and Partial Rescission of Administrative Review*, 64 FR 42912 (August 6, 1999) (*Preliminary Results*). We gave interested parties an opportunity to comment on our preliminary results and held a public hearing on October 28, 1999. The following parties submitted comments: FMC Corporation (the petitioner); Shanghai Ai Jian Import & Export Corporation (Ai Jian), Sinochem Jiangsu Wuxi Import & Export Corporation (Wuxi), and Shanghai Ai Jian Reagent Works (AJ Works) (producer for Ai Jian and Wuxi) (collectively, the respondents).

The Department has now completed this administrative review in accordance with section 751(a) of the Act.

Scope of Review

The products covered by this review are persulfates, including ammonium, potassium, and sodium persulfates. The chemical formula for these persulfates are, respectively, (NH sub4) sub2 S sub2 O sub8 , K sub2 S sub2 O sub8 , and Na sub2 S sub2 O sub8 . Ammonium and potassium persulfates are currently classified under subheading 2833.40.60 of the Harmonized Tariff Schedule of the United States (HTSUS). Sodium persulfate is classified under HTSUS subheading 2833.40.20. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Export Price

For both Ai Jian and Wuxi, we calculated export price (EP) in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and constructed export price (CEP) methodology was not otherwise warranted, based on the facts of record. We calculated EP based on the same methodology used for purposes of the preliminary results.

Normal Value

Section 773(c)(4) of the Act requires the Department to value the non-market economy (NME) producer's factors of production, to the extent possible, in one or more market economy countries that: (1) are at a level of economic development comparable to that of the NME, and (2) are significant producers of comparable merchandise. As stated in the *Preliminary Results*, the Department has determined in this case that India meets both statutory requirements for an appropriate surrogate country. For purposes of the final results, we have continued to rely on India as the surrogate country. Accordingly, we have calculated normal value (NV) using Indian surrogate values for the PRC producers' factors of production except in those instances where an input was sourced from a market economy and paid for in a market economy currency.

We used the same methodology for calculating NV as that described in the Preliminary Results, with the following exceptions: (1) We corrected our adjustment for the sales and excise taxes included in the values reported in Chemical Weekly because of an inadvertent error (see comment 12 below); (2) we adjusted the calculation of freight costs incurred between the suppliers of packing materials (*i.e.*, polyethylene and woven bags, polyethylene sheet, wood pallets, fiberboard, and polypropylene sacks) and AJ Works in order to correct certain errors made in the preliminary results calculations; (3) we included AJ Works' indirect labor hours in our calculation of labor expenses, which were inadvertently omitted from our preliminary results calculations (*see* comment 10 below); (4) we adjusted AJ Works' reported indirect labor hours to account for the labor hours of additional employees that were previously not included (see comment 10 below); (5) we reclassified certain depreciation expenses from Calibre Chemicals Pvt. Limited's (Calibre's) financial statements as selling, general, and administrative expenses (SG&A) expenses, which results in a change to the overall factory overhead and SG&A ratios (*see* comment 7 below). *See* the *U.S. Price and Factors of Production Adjustments for the Final Results* (*Calculation Memorandum*) and *Final Results Factors Valuation Memorandum from the Team to the File* (*Factors Memorandum*) dated December 6, 1999, for a more detailed explanation of these calculation changes.

Analysis of Comments Received

Comment 1: Construction Costs for New PRC Factory and Alleged Fire at the New Facility

The petitioner argues that the Department failed to incorporate in the normal value calculation costs related either to the construction of a new factory or to a fire that allegedly occurred at AJ Works during the period of review (POR) and, as a result, the normal value was understated. The petitioner further argues that, despite the petitioner's requests, the Department failed to obtain from AJ Works information related to these two events. The petitioner asserts that the Department has an obligation to investigate antidumping cases and to assign fair dumping margins, and that the failure to obtain data requested by the petitioner constitutes an abuse of discretion. The petitioner cites several court cases in which it claims that the Court of International Trade (CIT) required the Department to perform an investigation of the facts related to the issues of the related antidumping

proceedings (*e.g.*, *Wieland-Werke AG* v. *United States*, 4 F. Supp. 2d 1207 (CIT 1998), *Rhone-Poulenc, Inc.* v. *United States*, 927 F. Supp. 451, 456 (CIT 1996), and *Freeport Minerals Company* v. *United States*, 776 F.2d 1029, 1034 (Fed. Cir. 1985)).

The petitioner states that the initial operations of a new production plant have an adverse effect on all categories of manufacturing costs. In particular, the petitioner notes that during the initial phase of production, the production volume will generally be lower than normal, which results in higher per-unit fixed costs, most notably depreciation expenses. Similarly, the petitioner states that a company that experienced a fire will have higher per-unit costs due to the disruption in production. In a market-economy case, the petitioner asserts, costs related to a new factory or a fire are captured in the cost of manufacturing of a market-economy respondent. In this case, the petitioner argues, if the Department does not account for such increases in AJ Works' cost of manufacturing, the normal value for the respondents will be understated.

The petitioner contends that the Department should have issued a questionnaire to AJ Works in order to confirm that a fire did occur at AJ Works' production facility and obtain sufficient information to allow the Department to value the costs related to the fire. With respect to the construction of a new factory, the petitioner submits that the Department must develop a methodology for calculating additional costs and increase AJ Works' normal value accordingly.

The respondents rebut that the petitioner's concerns about costs related to the construction of a new factory or an alleged fire are irrelevant in an NME proceeding. The respondents argue that although AJ Works' accounting records may indicate additional factory overhead and SG&A expenses resulting from costs related to the construction of a new factory or a fire, such expenses were incurred in NME currencies and are, therefore, considered by the statute to be unreliable for purposes of calculating dumping margins. Citing the preamble to the Department's regulations in which the Department stated that the ''use of an NME price as a benchmark is inappropriate because it is the unreliability of NME prices that drives us to use the special NME methodology in the first place,'' the respondents argue that the Department does not consider the expenses incurred by the NME producer relevant to the surrogate value analysis. *See Antidumping Duties: Countervailing Duties; Final Rule*, 62 FR 27296, 27367–27368 (May 19, 1997) (*Final Rule*). Thus, the respondents argue that the petitioner's proposal to add ''factors of construction'' to the calculation of AJ Works'' normal value is contrary to statutory intent and the Department's established NME practice of disregarding transactions that involve non-market economy prices.

Furthermore, the respondents claim that the Department does not permit an adjustment of the surrogate factory overhead, SG&A or profit values merely because the circumstances of the surrogate producer are different from that of the NME respondent's experience. The respondents cite the preamble to the Department's regulation in which the Department stated that ''we do not believe it is appropriate to check surrogate values {for manufacturing overhead, general expenses, and profit} against the NME respondents' experience.'' *Final Rule*, 62 FR at 27366.

Regarding the petitioner's argument concerning the Department's obligation to investigate claims made by the petitioner, the respondents assert that in the same court cases cited by the petitioner, the CIT did not obligate the Department to investigate information that is irrelevant to the Department's determination or based on speculation. In the present case, the respondents continue, the petitioner's concerns about AJ Works' construction and fire-related costs are purely speculative and contradicted by the record evidence that has been fully verified by the Department. Accordingly, the respondents urge the Department to reject the petitioner's proposal to calculate ''factors of construction'' or costs related to an alleged fire.

DOC Position

We disagree with the petitioner that the normal value we calculated for AJ Works in the preliminary results is understated. In accordance with section 773(c)(1) of the Act, we calculated normal value based on AJ Works' factors of production, including amounts for direct materials, labor hours, energy, and surrogate values for factory overhead, SG&A and profit. The petitioner requests that we increase the normal value to capture additional costs AJ Works incurred related to the construction of a new factory and an alleged fire. The petitioner's argument, however, has no statutory basis. The NME normal value provisions of the statute neither direct us nor provide us with a method by which to make the types of adjustments requested by the petitioner. In addition, such an adjustment is not in accordance with Department practice.

With respect to the petitioner's argument concerning the increase in the per-unit fixed costs, in particular depreciation expenses, during an initial phase of production, we note that such expenses are included in factory overhead, which in this review is based on the surrogate overhead expenses of Calibre. We do not find it appropriate, however, to adjust Calibre's factory overhead costs to match the experience of AJ Works. In this regard, we cite to the Department's position in *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From Romania: Final Results and Rescission in Part of Antidumping Duty Administrative Review,* 61 FR 51427 (October 2, 1996) (*TRBs from Romania*). In that review, we stated, ''[t]he Department normally bases normal value completely on factor values from a surrogate country on the premise that the actual experience in the NME cannot meaningfully be considered.'' *See TRBs from Romania*, 61 FR at 51429. Based on this principle, the Department articulated in other cases that with respect to overhead and SG&A surrogate values, the Department does not customize the values to match the circumstances of the PRC producer. *See e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of 1996–1997 Antidumping Duty Administrative Review and New Shipper Review and Determination Not To Revoke Order in Part*, 63 FR 63842, 63853 (November 17, 1998); *Certain Helical Spring Lock Washers From the People's Republic of China: Final Results of Antidumping Administrative Review*, 61 FR 41994, 41999 (August 13, 1996). Accordingly, we find no basis to attempt to manipulate Calibre's financial data to capture construction-related costs incurred by AJ Works.

Contrary to the petitioner's claim, none of the court cases cited by the petitioner requires that we obtain information that is not relevant to our determination. Although we do have information on the record that AJ Works began production in a new facility during the POR, we did not obtain further information concerning costs related to the new production facility because such information is not relevant for purposes of calculating normal value within the parameters of our NME calculation methodology. For the same reason, we did not obtain information on whether AJ Works experienced a fire during the POR.

Comment 2: Whether to use Calibre's 1997 or 1998 Data, or the Average for Purposes of Calculating Factory Overhead, SG&A, and Profit

To value the respondents' factory overhead, SG&A and profit for purposes of the preliminary results, we calculated surrogate ratios based on Calibre's financial statements for fiscal years 1997 and 1998. (Calibre's fiscal year begins on April 1 and ends on March 30.) Both the petitioner and the respondents disagree with the Department's calculation of these surrogate ratios based on the average of 1997 and 1998 data.

The petitioner argues that if the Department does not include additional costs related to the construction of the new factory in the calculation of normal value, the Department, as an alternative, should use Calibre's 1997 financial data, as opposed to an average of 1997/1998 data. The petitioner contends that the data from Calibre's 1997 fiscal year is more reflective of AJ Works' experience of constructing a new factory during the POR, because information from Calibre's financial statements suggests that Calibre expanded its production facilities during its 1997 fiscal year. Specifically, the petitioner argues that certain overhead costs decreased from Calibre's 1997 fiscal year to its 1998 fiscal year, although its production volume increased. The data also indicate that production capacity increased, while expenses related to subcontracting labor decreased during that same period.

The petitioner asserts that the Department has broad discretion in the selection and application of surrogate values, and that it may reject certain portions of Calibre's financial statements, or all of its financial statements, if it determines that these data are not reliable indicators of surrogate values for factory overhead, SG&A, or profit. The petitioner cites *Nation Ford Chemical Company* v. *United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1999) (*Nation Ford*), in which the Department maintained that it ''has the discretion to use whatever values are the most reflective of the experience of the NME producer.'' Therefore, because Calibre's data indicate that it expanded its production facility during the 1997 fiscal year, the petitioner argues that the Department should use only the 1997 data in its calculations in order to reflect accurately the experience of AJ Works.

The respondents, on the other hand, argue that the Department should calculate surrogate overhead, SG&A expenses, and profit based only on Calibre's 1998 data because Calibre's 1998 fiscal year is contemporaneous with most of the respondents' U.S. sales. The respondents state that for administrative reviews, the Department calculates entry-specific dumping margins based on the date of each U.S. sale, in accordance with section 751(a)(2)(A) of the Act and 19 CFR 351.414. The respondents claim that the fundamental reasoning behind this methodology is to determine whether the specific U.S. sale is being sold at less than fair value when compared to the normal value of merchandise produced contemporaneously with the U.S. sale. The respondents contend that the Department's decision to average Calibre's 1997 and 1998 financial data creates a distorted normal value that is not contemporaneous with the sales of subject merchandise.

The petitioner objects to the respondents' argument to use only Calibre's 1998 data, and argues that contemporaneity is more accurately defined by the review period itself, not the period of time within a review period that a respondent made its sales to the United States. The petitioner asserts that the respondents' argument is not supported by case precedence, and that the proposed methodology of choosing surrogate value data based on the date of the U.S. sale can allow an NME respondent to manipulate its future U.S. sale dates based on the available surrogate value data. The petitioner also argues that in addition to contemporaneity, accuracy is an important factor in selecting surrogate value data.

DOC Position

We disagree with both the petitioner and the respondents. First, we address the petitioner's argument that factory overhead expenses should be based solely on Calibre's 1997 fiscal year. The POR in this review overlaps both Calibre's 1997 and 1998 fiscal years. Calibre's 1997 fiscal year covers three months of the POR while Calibre's 1998 fiscal year falls entirely within the POR. In valuing factors of production, we select, where possible, surrogate values that are representative of a range of prices either within the POR or most contemporaneous with the POR. In this case, both Calibre's 1997 and 1998 fiscal years are contemporaneous with the POR.

With respect to the petitioner's argument that Calibre's 1997 fiscal year is most reflective of AJ Works' experience during the POR because it allows the Department to estimate the increase in AJ Works' costs, we emphasize the Department's consistent practice with regard to this matter discussed above under Comment 1. Specifically, as noted above, the Department does not tailor the factory overhead and SG&A expenses of a surrogate company to match the experience of the PRC producer. The U.S. Court of Appeals upheld in *Nation Ford* that, although ''a surrogate value must be as representative of the situation in the NME country as is feasible,'' we are not required to ''duplicate the exact production experience of the NME producer'' at the expense of choosing a surrogate value that most accurately represents the fair market value of the various factors of production in the surrogate country. Further, the U.S. Court of Appeals upheld the decision made in *Magnesium Corp. of Am.* v. *United States*, 166 F. 3d 1364 (CAFC 1999), that a factors of production analysis ''does not require item-by-item accounting for factory overhead.'' Therefore, for purposes of calculating surrogate factory overhead based on Calibre's data, we find it inappropriate to attempt to match Calibre's factory overhead expenses to AJ Works' production experience.

Regarding the respondents' arguments, we disagree that the use of both 1997 and 1998 data distorts normal value and is inconsistent with the Department's practice. First, the respondents incorrectly argue that 19 CFR 351.414 directs the Department to compare each U.S. sale to the normal value that is contemporaneous with the date of U.S. sales. This section of our regulations applies to the calculation of normal value in a market economy, which is not applicable in this administrative review, because AJ Works is located in an NME country.

In an NME proceeding, contemporaneity is defined by the POR itself, not the period of time within the POR that a respondent made its sales to the United States. As noted above, the POR in this instance is within both Calibre's 1997 and 1998 fiscal year periods. Furthermore, as the petitioner notes, in selecting surrogate values, we consider the accuracy of the data in addition to contemporaneity. As we noted in the *Preliminary Results*, because of the substantial differences between Calibre's 1997 and 1998 overhead and SG&A data, we determined that it was appropriate to average the 1997 and 1998 fiscal years in order to smooth out the effect of such differences. Thus, while Calibre's fiscal year 1998 fully coincides with the POR, the POR in fact is within both Calibre's 1997 and 1998 fiscal year periods and using both fiscal years results in the most accurate surrogate values for factory overhead and SG&A.

Based on the foregoing, we continued to find that averaging Calibre's 1997 and 1998 fiscal year data is most appropriate and, therefore, have continued to use the average data for purposes of calculating surrogate factory overhead, SG&A, and profit ratios.

Calculation of Factory Overhead

Comment 3: Allocation of Factory Overhead Expenses Between Subject and Non-Subject Merchandise

For purposes of our preliminary results, we allocated Calibre's total factory overhead expenses between subject and non-subject merchandise based on raw material input quantities as reported in the company's financial statements. The respondents contend that the Department's allocation methodology is unsupported by record evidence and inconsistent with Department practice. First, the respondents argue that neither the Department nor the petitioner provided any documentary support for using raw material input quantity as the allocation basis. In particular, the respondents claim the Department's analysis fails to explain why it is more appropriate to use relative input quantities rather than input values as the allocation basis.

In fact, the respondents submit, the Department has a preference for a value-based allocation methodology where two co-products produced from a common production process vastly differ in value. In support of their contention, the respondents cite *Polyvinyl Alcohol From Taiwan: Final Results of Antidumping Duty Administrative Review*, 63 FR 32810, 32815 (June 16, 1998) (*PVA from Taiwan*), in which the Department determined that the production costs for two co-products were properly allocated based on the relative sales value of the two co-products. In the present case, the respondents claim that the sales value of Calibre's non-subject merchandise is significantly higher than the sales value of its subject merchandise. The respondents base this claim on a comparison of the respondents' POR-average unit price of the subject merchandise to the 1998 U.S. import values of the non-subject merchandise. Given the greater revenue-generating power of non-subject merchandise, the respondents assert that it is more appropriate to allocate costs based on value. Accordingly, the respondents argue that the Department should allocate Calibre's overhead costs between subject and non-subject merchandise based on the relative raw material input value.

The petitioner maintains that the Department's allocation methodology is supported by record evidence, and is based on sound cost accounting principles. In particular, the petitioner points to a February 16, 1999, letter placed on the record from an FMC Corporation official supporting the use of relative raw material consumption amounts as an allocation basis. The petitioner further argues that Calibre's subject and non-subject merchandise cannot be considered co-products. The petitioner, citing *PVA from Taiwan*, notes that co-products are ''produced simultaneously up to a point, after which they become separated from one another.'' 61 FR 14064, 14071. In this case, the petitioner claims, Calibre's non-subject products require different raw materials than the subject merchandise, and, therefore, the products cannot be commingled during production. Therefore, the petitioner concludes by asserting that a value-based allocation methodology is inappropriate with respect to Calibre's overhead costs.

According to the petitioner, the most common basis for allocating costs between products that are not co-products is machine hours, direct labor hours, production volume, or raw material input quantities. In this case, the petitioner observes, among these factors, the only information available in Calibre's financials statements is the raw material input quantities. Therefore, the petitioner submits that the Department's allocation of Calibre's overhead expenses based on raw material input quantity is the only reasonable way to allocate costs in this case.

DOC Position

Calibre's financial statements do not contain sufficient information for us to determine whether the company's non-subject products are co-products in the production process of persulfates. The Department's regulations, however, provide generally that, in determining the appropriate method for allocating costs among products, we ''may take into account production quantities, relative sales values, and other quantitative and qualitative factors associated with the manufacture and sales of the subject merchandise.'' *See* 19 CFR 351.407(c). In this case, Calibre's factory overhead costs to be allocated include depreciation costs, consumable stores, repairs and maintenance costs, and other manufacturing overheads. These types of overhead items are associated with the production volume of each product and, as such, can be measured either by the relative raw material input quantities or the output quantity of each finished product. Calibre's financial statements do not provide the relative production quantity of each finished product, but do provide the relative raw material input usage. Accordingly, given the data available from Calibre's financial statements, we find that relative raw material input usage provides the most reasonable and accurate basis to allocate overhead costs between Calibre's products.

Comment 4: Calculating Factory Overhead as a Percentage of Material, Labor, and Energy Costs

The respondents contend that the Department improperly calculated the surrogate factory overhead ratio by dividing Calibre's overhead expenses by material costs only. The respondents state that the Department's established practice in this regard is to divide the surrogate company's overhead costs by the cost of materials, labor, and energy. This methodology, the respondents argue, is based on the fundamental understanding that overhead costs relate to more than just material costs, but also to labor and energy costs. According to the respondents, the relative raw material consumption quantities, which the Department used to allocate Calibre's overhead expenses between its subject and non-subject merchandise, can also be applied to Calibre's labor and energy costs in order to calculate a denominator inclusive of material, labor, and energy costs.

The petitioner counters that there is no information available upon which to allocate Calibre's labor and energy costs among the company's finished products. The petitioner points out that Calibre's financial statements do not identify the labor expenses or electricity usage for each finished product. Accordingly, the petitioner submits that the methodology used by the Department provides the most accurate calculation possible of the overhead costs incurred for the production of persulfates.

DOC Position

We disagree with the respondents that our calculation methodology with respect to the surrogate factory overhead ratio is improper or distorted. Although the respondents are correct that the Department's standard methodology of calculating overhead expenses is to divide the total factory overhead expenses by the total material, energy and labor costs, the Department has the discretion to adopt alternative approaches of calculating factory overhead, SG&A and profit ratios depending on the specific facts of the case. *See, e.g., Manganese Metal From*

the People's Republic of China: Final Results of Second Antidumping Administrative Review, 64 FR 49447, 49456 (September 13, 1999), in which the Department derived labor-exclusive surrogate overhead and SG&A percentages. In this review, as explained in our *Preliminary Results,* we determined that because of the differing cost structures between Calibre's production of subject and non-subject merchandise, it was more appropriate first to allocate Calibre's overhead expenses between its product lines. Given the available data in Calibre's financial statements and information on the record, we determined that raw material input quantity is the most accurate basis to allocate overhead expenses. Specifically, we defined overhead as a percentage of Calibre's raw material costs. We then applied this ratio directly to the raw material costs that we calculated based on AJ Works' reported factors of production. Based on the foregoing, we maintain that our preliminary results calculation of the factory overhead rate provides the most reasonable methodology based on the information on the record. With respect to labor and energy costs, however, there is no information available from which to allocate these costs among the company's finished products, and, hence, no way to use labor and energy costs along with material costs in order to calculate overhead.

Calculation of SG&A Expenses

Comment 5: Appropriate Indian Surrogate Company

For purposes of the preliminary results, we based SG&A expenses on Calibre's financial data and calculated the expenses as a percentage of total cost of manufacturing, in accordance with the Department's standard methodology. The petitioner argues that Calibre's SG&A data is unreliable because it cannot be viewed as representative of the operations of AJ Works. The petitioner bases its argument on two grounds. First, the petitioner claims that, as with factory overhead costs, Calibre's dissimilar cost structure between subject and non-subject merchandise distorts the company's SG&A expenses, when calculated using the Department's traditional methodology. Specifically, the petitioner asserts that an allocation of SG&A expenses on the basis of Calibre's cost of manufacturing would overstate the amount of the SG&A expenses attributed to non-subject merchandise due to the fact that the majority of Calibre's cost of manufacturing is made up of raw materials costs for non-subject merchandise. The petitioner observes that there is no reasonable basis upon which to allocate the total SG&A expenses between persulfates and non-subject merchandise because, by their nature, SG&A expenses are unrelated to the immediate manufacturing process and any allocation methodology is wholly arbitrary.

The petitioner further notes that in a market economy case it does not matter that the respondent may manufacture a variety of diverse products because the SG&A factor is based on the actual expenses incurred by the market economy respondent. In a non-market economy case, however, the petitioner asserts that the SG&A factor is based on the SG&A experience of a surrogate company whose operations may not accurately reflect those of the NME producer, and that such a situation applies to this administrative review.

Second, the petitioner claims that Calibre's SG&A rate, when compared to other representative benchmark rates, demonstrates that Calibre's data grossly understate the SG&A rate for persulfates production. Specifically, the petitioner makes a comparison of Calibre's data to both the SG&A data of National Peroxide, an Indian producer of comparable merchandise that the Department relied upon in the original investigation, and to the SG&A data of the Indian chemicals and metals industry as reflected in the Reserve Bank of India Bulletin (RBI) data.

Accordingly, based on the foregoing reasons, the petitioner submits that we should reject Calibre's SG&A data and rely upon National Peroxide's SG&A data as the most accurate surrogate value available in this review. The petitioner cites a number of past cases in support of its position that the Department has wide discretion in the selection of surrogate values, including using a mix of financial data of two different surrogate companies.

The respondents counter that the petitioner failed to provide any legal or factual support for its argument that Calibre's data is unreliable. As a legal matter, the respondents emphasize that the Department's NME practice establishes a clear preference for selecting surrogate value sources that are producers of subject merchandise. The respondents argue that it would only be necessary to use data from a surrogate producer of comparable merchandise if the data of the surrogate producer of the identical merchandise is incomplete, distorted, or not contemporaneous. In this instance, the respondents assert that the petitioner has not demonstrated that Calibre's data is incomplete or distorted for purpose of calculating the surrogate SG&A expense ratio. Therefore, the respondents urge the Department to reject the petitioner's argument and continue to rely upon Calibre's SG&A data.

DOC Position

We disagree with the petitioner that Calibre's financial data is inappropriate for purposes of calculating a surrogate SG&A ratio. First, we address the petitioner's assertion that Calibre's SG&A data is distorted because it overstates the amount of the SG&A expenses attributed to non-subject merchandise and understates the amount attributed to subject merchandise. As the petitioner notes, in market-economy cases, the Department's long-standing practice with respect to allocating general expenses to individual products is to calculate a rate by dividing the company's general expenses by its total cost of sales, as reported in the respondent's audited financial statements. See the Department's standard Section D Cost of Production and Constructed Value questionnaire at page D–17. This method recognizes general expenses are costs that relate to the company's overall operations, rather than to the operations of a division within the company or to a single product line. *See Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Corrosion-Resistant Carbon Steel Flat Products From Japan,* 58 FR 37154, 37166 (July 9, 1993); and *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Sweden,* 63 FR 40449, 40459 (July 29, 1998). Although this proceeding involves a non-market economy country, the immediate issue at hand involves deriving an SG&A ratio using the financial data of a market-economy company. Unlike factory overhead costs, SG&A expenses are not considered to be directly related to the production of merchandise. In fact, in most cases, general expenses are so indirectly related to a particular production process that the most reasonable allocation basis is the company's total cost of manufacturing. Thus, while it is appropriate to allocate the factory overhead costs between subject and non-subject merchandise on a basis other than cost, we find no basis to allocate SG&A expenses to specific product lines on any other basis.

While we recognize that Calibre's financial data does not mirror the actual experience of AJ Works, this does not

render Calibre's data unreliable for purposes of calculating a surrogate SG&A ratio within the context of the Department's NME methodology. As discussed above under comments 1 and 2, ''[t]he Department normally bases normal value completely on factor values from a surrogate country on the premise that the actual experience in the NME cannot meaningfully be considered.'' *See TRBs from Romania,* 61 FR at 51429. Therefore, with respect to overhead and SG&A surrogate values, the Department does not tailor the values to match the circumstances of the PRC producer. Accordingly, the fact that Calibre's financial data may not reflect AJ Works' actual experience provides no basis to conclude that Calibre's data is unreliable.

In this case, we have on the record three different sources for valuing factory overhead, SG&A and profit ratios: the financial statements of Calibre, the financial statements of National Peroxide, and the RBI data. In the less-than-fair-value (LTFV) proceeding, the Department rejected RBI data as a basis for surrogate values and, instead, used the financial data of National Peroxide. We determined that, in the absence of data from a surrogate producer that produced merchandise that was identical to persulfates, it was necessary to use data of a surrogate producer that produced comparable merchandise. In the instant review, we have on the record the financial statements of an Indian persulfates producer. As the respondents note, the Department's NME practice establishes a preference for selecting surrogate value sources that are producers of identical merchandise, provided that the surrogate data is not distorted or otherwise unreliable. For the reasons discussed above, we do not find Calibre's data distorted or otherwise unreliable.

With respect to the cases cited by the petitioner, we note that with the exception of *Beryllium Metal and High Beryllium Alloys From the Republic of Kazakstan,* 62 FR 2648 (January 17, 1997) (*Beryllium Metal From Kazakstan*), none of the cases involved relying on multiple sources for factory overhead, SG&A and profit ratios. In *Beryllium Metal From Kazakstan,* we calculated SG&A and profit ratios based on financial data from the primary surrogate country, Peru. With respect to overhead, we relied on financial data from a producer in Brazil because there was a lack of detailed overhead cost data from Peru. In the instant review, Calibre's financial statements provide sufficient detailed data for us to calculate an SG&A ratio in accordance with our normal methodology.

The petitioner proposes that we value factory overhead and profit based on Calibre's financial statements, but value SG&A expenses based on National Peroxide's financial statements. We find this approach to be inappropriate and unwarranted. A company's profit amount is a function of its total expenses. Using Calibre's financial data for factory overhead and profit, then using National Peroxide's data for SG&A, as proposed by the petitioner, results in applying a profit ratio that bears no relationship to the overhead and SG&A ratios. In addition, the petitioner's approach increases the potential for double-counting or under-counting of expenses because different companies may classify expenses differently.

Accordingly, based on the foregoing considerations, we conclude that, in the instant review, Calibre's financial data provides the best available information with respect to surrogate values for factory overhead, SG&A and profit ratios. Therefore, for purposes of these final results, we have continued to rely upon Calibre's financials for these values.

Comment 6: Understatement of SG&A Expenses

The petitioner argues that for purposes of the preliminary results, the Department understated SG&A expenses by omitting wages and salaries of selling and administrative personnel. The petitioner observes that Indian companies generally include the total salaries and wages for all labor (i.e., direct and indirect production labor and SG&A labor) in one expense category (''Employment Costs''), separate and apart from SG&A expenses. According to the petitioner, because the SG&A factor the Department used for purposes of the preliminary results did not include any portion of the ''Employment Costs'' category, we failed to include any costs for selling and administrative personnel in the calculation. For purposes of the final results, the petitioner argues that we should estimate the number of hours for selling and administrative personnel at Ai Jian and Wuxi and increase the SG&A expenses by multiplying the estimated hours for each company by the hourly wage rate.

The respondents object to the petitioner's argument by first noting that in our preliminary results, we included cost categories for ''service and jobwork expenses,'' ''directors'' remuneration,'' and ''professional charges'' from Calibre's data as part of SG&A expenses. The respondents continue by stating that, contrary to the petitioner's claim, categories listed under ''Employment Costs'' relate to direct and indirect labor costs associated with the production of merchandise and do not include SG&A labor. Moreover, the respondents argue that the petitioner's proposed methodology would double-count SG&A labor. Accordingly, the respondents urge the Department to reject the petitioner's argument.

DOC Position

We agree with the respondents. Based on our review of Calibre's financial statements, while we find that categories listed under ''Employment Costs'' relate to direct and indirect labor costs associated with the production of merchandise, there is no information to indicate that these categories also include SG&A labor costs. As the respondents note, we included cost categories for ''service and jobwork expenses,'' ''directors'' remuneration,'' ''professional charges,'' ''selling expenses,'' and ''administrative overheads'' in SG&A expenses. In order for us to compute SG&A labor hours as a separate element of factors of production, as proposed by the petitioner, it would be necessary to derive SG&A expenses from Calibre's financial data exclusive of all labor components. Given the lack of sufficient detailed data, we are not able to break out labor costs from Calibre's SG&A expense categories. Accordingly, we did not calculate SG&A labor hours as a separate component in our factors of production calculation. Rather, we are making a reasonable assumption that SG&A labor is included in the surrogate SG&A ratio.

Comment 7: Depreciation Expenses

The respondents argue that for purposes of the preliminary results, the Department improperly included all depreciation expenses as part of factory overhead without allocating a portion of the expenses to SG&A. According to the respondents, Department practice mandates that depreciation costs be allocated according to the function and value of the assets, and only depreciation costs that are attributable to assets related to manufacturing costs may be allocated to factory overhead. At a minimum, the respondents assert that the Department should allocate depreciation costs for ''Residential Building'' and ''Furniture and Fixtures'' to SG&A and a portion of the costs for ''Computers'' and ''Vehicles'' to SG&A.

The petitioner asserts that the record evidence does not include any information that would allow the

Department to allocate depreciation costs as suggested by the respondents. Thus, the petitioner states that the Department should classify all expenses in question as manufacturing expenses and include them in factory overhead.

DOC Position

We agree with the respondents that depreciation costs should be allocated between factory overhead and SG&A based on the value and function of the assets, in accordance with Department practice. *See e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China,* 62 FR 6189 (February 11, 1997). Calibre's financial statements contain a breakdown of the total depreciation costs for fiscal year 1998. Based on this information, we classified each expense category as either overhead or SG&A for purposes of these final results. Where it was unclear whether an expense would be more properly categorized as overhead rather than SG&A (*i.e.,* ''Computers'' and ''Vehicles''), we allocated the expense amount evenly between the two categories. With respect to fiscal year 1997 depreciation costs, Calibre's financial statements do not provide a breakdown of the total amount. Therefore, we allocated the total costs between overhead and SG&A based on the percentage of total costs allocated to each category for fiscal year 1998. *See* the *Factors Memorandum* for detailed analysis.

Comment 8: Reclassifying ''Service and Jobwork'' Expenses

The respondents claim that the Department improperly classified ''Service and Jobwork'' expenses as SG&A expenses. According to the respondents, the reference to ''jobwork'' identifies these expenses as related to subcontracting labor expenses that should be considered as part of direct manufacturing labor costs, rather than as SG&A expenses.

The petitioner submits that because Calibre's financial statements do not describe the type of expenses that are included in the line item ''Service and Jobwork'' expenses, it is within the Department's discretion to classify these expenses on the basis of the best information available. The petitioner suggests that it is much more likely that these expenses relate primarily to auxiliary manufacturing services rather than to contract labor hired to assist in the production of merchandise. Accordingly, the petitioner states that the Department should continue to include these expenses in SG&A.

DOC Position

We disagree with the respondents. As noted by the petitioner, Calibre's financial statements do not provide a description of the type of expenses that are included in the ''Service and Jobwork'' expenses line item. Therefore, there is no basis to conclude that these expenses represent labor costs directly associated with the production of merchandise. Moreover, as noted by both the petitioner and respondents under comment 6 above, it appears that direct and indirect labor costs related to production are separately reported under ''Employment Costs'' in Calibre's financial statements. Therefore, because the ''Service and Jobwork'' expenses line item is listed as a separate category, and not under ''Employment Costs,'' we conclude that we properly treated these expenses as SG&A.

Comment 9: Scrap Income

The respondents claim that the Department erroneously applied Calibre's sale of scrap as an offset to its cost of manufacturing in the calculation of SG&A ratio. According to the respondents, the Department's practice is to apply an offset for scrap only when the respondent claims an offset for scrap. Given that the respondents in this review did not receive scrap revenue, the respondents assert that it would be inappropriate for the Department to attribute scrap revenue from the surrogate Indian producer to the data reported by the respondents.

The petitioner did not comment on this issue.

DOC Position

We disagree with the respondents and have continued to include Calibre's sales of scrap as an offset to its cost of manufacturing for purposes of deriving a surrogate SG&A ratio. The Department's practice is to treat scrap sales as a reduction in cost of manufacturing. *See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China,* 63 FR 72255 (December 31, 1998). While AJ Works had no scrap sales and did not claim an offset for scrap, this is irrelevant to our calculation of a surrogate *SG&A ratio.* Calibre did receive revenue from sale of scrap materials, and this revenue is an offset to its cost of manufacturing. Therefore, in calculating Calibre's SG&A ratio as a percentage of its cost of manufacturing, we need to include all revenues and expenses that affect its cost of manufacturing. Accordingly, we have continued to offset Calibre's cost of manufacturing with the scrap revenue amount. As noted above under Comment 5, in calculating surrogate overhead and SG&A ratios, we consider all components of the surrogate company's manufacturing and general expenses without tailoring them to match the circumstances of the NME producer. *See e.g., TRBs from the PRC,* 63 FR at 63853.

Comment 10: Indirect Labor

The petitioner contends that the Department, for purposes of the preliminary results, failed to include indirect labor hours in the calculation of normal value. According to the petitioner, because the surrogate Indian company's financial statements do not include salaries or wages for indirect workers in the factory overhead expenses, the Department needs to include AJ Works' total indirect labor hours as a factor of production. The petitioner further asserts that AJ Works under-reported the number of indirect labor hours in the factors of production data submitted to the Department. Accordingly, the petitioner argues that the Department should increase the reported number of indirect hours to account for all of the indirect workers reported by AJ Works using the methodology proposed in its case brief.

The respondents rebut that the Department correctly included the factory's indirect labor hours in the calculation of normal value. The respondents further state that, contrary to the petitioner's claim, the Department found no discrepancies at verification concerning its reported indirect labor hours.

DOC Position

We agree with the petitioner that we erred in the preliminary results calculations by not including indirect labor hours in the factors of production calculation. We further agree with the petitioner that based on our review of information on the record, the number of indirect labor hours AJ Works reported in its factors of production table understates the total number of indirect labor hours involved in the production of subject merchandise during the POR. Specifically, AJ Works, in its November 19, 1998, Section D response, stated that it reported indirect labor hours associated with ''inventory maintenance'' in the factors of production table. In its February 4, 1999, supplemental Section D response, AJ Works provided a list of all divisions in the factory and the corresponding number of employees in each division. Our review of this list indicates that AJ Works omitted labor hours for certain

employees indirectly related to the production of subject merchandise, such as quality control, technology and energy department personnel. Therefore, for purposes of the final results, we increased the number of indirect labor hours based on information AJ Works provided in its supplemental Section D response and included the revised per-unit indirect labor hour in our calculation of normal value. *See* the *Calculation Memorandum* for a detailed analysis.

Comment 11: Separate Rates

The petitioner submitted for the record a copy of a Circular issued by the Chinese Communist Party on January 14, 1997, entitled ''Notice of the Communist Party of China Central Committee on Reinforcing and Improving Party Building in the State-Owned Enterprises'' (*The Circular*). Citing excerpts from *The Circular,* the petitioner claims that *The Circular* expressly imposes Communist Party control over, among other things, decisions regarding the selection of management and decisions concerning the disposition of proceeds of export sales and profits. Accordingly, the petitioner claims, the Department should, on the basis of *The Circular,* presume *de facto* state control over state enterprises and apply a single country-wide rate to the respondents in this proceeding.

The respondents counter that the petitioner fails to demonstrate how *The Circular* demonstrates *de facto* control of any of the respondents in this review. The respondents argue that they have substantiated their claim of *de facto* independence from the central Chinese government and demonstrated that they are unaffected by the provisions of *The Circular.* Accordingly, the respondents request the Department to reject the petitioner's argument.

DOC Position

We disagree with the petitioner. We note that the petitioner submitted *The Circular* on the record of the LTFV investigation of persulfates from the PRC, covering the period January through June 1996, and requested that the Department revisit its policy regarding separate rates. For purposes of the final determination, the Department stated that ''* * * it is not clear that [*The Circular*] nullifies or amends any laws or regulations that grant operational independence to exporters, or that it will result in *de facto* government control over export activities of [state-owned exporters] at some time,'' and determined that Ai Jian and Wuxi merited separate rates.

In the instant review, we found that the two exporters subject to review operate independently with respect to exports. Specifically, we found that (1) export prices are not set by or subject to government control; (2) company officials have the authority to negotiate and sign contracts; (3) each company has control over disposition of foreign currency earned from export sales; and (4) each company has autonomy from the government regarding the selection of management (*see* the *Sales Verification Report* for Ai Jian and Wuxi, dated June 24, 1999). Therefore, because the evidence on the record of this review demonstrates an absence of government control, both in law and in fact, with respect to the respondents' export activities, we have continued to assign both Ai Jian and Wuxi separate rates.

Comment 12: Chemical Prices

The petitioner argues that the Department overstated the excise and sales taxes deducted from prices published in *Chemical Weekly* due to an incorrect calculation, which results in an understatement of the surrogate values for these inputs.

The respondents agree with the petitioner.

DOC Position

We agree. We have made the appropriate corrections for purposes of the final results.

Final Results of the Review

As a result of our analysis of the comments we received, we have made changes to our analysis. We determine the following weighted-average margins existed for the period December 27, 1996, through June 30, 1998:

Manufacturer/Exporter	Margin (percent)
Shanghai Ai Jian Import & Export Corporation	5.41
Sinochem Jiangsu Wuxi Import & Export Corporation	7.18

Assessment Rates

The Department shall determine and the Customs Service shall assess antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties. For assessment purposes, we do not have the information to calculate an estimated entered value. Accordingly, we have calculated importer-specific duty assessment rates for the merchandise by aggregating the dumping margins calculated for all U.S. sales on an importer-specific basis and dividing this amount by the total quantity of those sales. This rate will be assessed uniformly on all entries of that particular importer made during the POR.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of this antidumping duty administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for each reviewed company will be the rate indicated above; (2) the cash deposit rate for Guangdong Petroleum will continue to be 34.97 percent, the company-specific rate from the LTFV investigation; (3) the cash deposit rate for all other PRC exporters will continue to be 119.02 percent, the PRC-wide rate established in the LTFV investigation; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.306 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review is issued and published in accordance with

sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 6, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–32225 Filed 12–10–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[A–570–825]

Sebacic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On Friday, August 6, 1999, the Department of Commerce published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on sebacic acid from the People's Republic of China. *See Sebacic Acid from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review,* 65 F.R. 42916 (Aug. 6, 1999). The administrative review covers four exporters of the subject merchandise to the United States: Tianjin Chemicals Import and Export Corporation; Guangdong Chemicals Import and Export Corporation; Sinochem International Chemicals Company, Ltd.; and Sinochem Jiangsu Import and Export Corporation. The period of review is July 1, 1997, through June 30, 1998.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received and the correction of certain clerical errors, we have changed our results from those presented in our preliminary results as described below in the ''Analysis of Comments Received'' section of this notice. The final results are listed below in the section ''Final Results of the Review.''

EFFECTIVE DATE: December 13, 1999.

FOR FURTHER INFORMATION CONTACT: Sunkyu Kim or Christopher Priddy, AD/CVD Enforcement Group I, Office II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2613 or (202) 482–1130, respectively.

APPLICABLE STATUTE AND REGULATIONS: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (April 1998).

SUPPLEMENTARY INFORMATION:

Background

On August 6, 1999, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the 1997–1998 administrative review of the antidumping duty order on sebacic acid from the People's Republic of China (PRC). *See Sebacic Acid from the PRC: Preliminary Results of Antidumping Duty Administrative Review,* 64 Fed. Reg. 42916 (August 6, 1999) (*Preliminary Results*). On August 26, 1999, Tianjin Chemicals Import and Export Corporation (Tianjin Chemicals), Guangdong Chemicals Import and Export Corporation (Guangdong Chemicals), and Sinochem International Chemicals Company, Ltd. (SICC) (collectively comprising the respondents) submitted additional surrogate value data. The petitioner and successor in interest to Union Camp Corporation, Arizona Chemical Company, filed a response to the respondents' submission on September 7, 1999. The petitioner and three of the four respondents submitted case briefs on September 7, 1999, and rebuttal briefs on September 13, 1999. The Department held a public hearing on October 27, 1999. The fourth respondent, Sinochem Jiangsu Import and Export Corporation, did not participate in this administrative review. Accordingly, the Department has continued to base the margin for this respondent on facts available for purposes of the final results.

The Department has now completed this administrative review in accordance with section 751(a) of the Act.

Scope of Review

The products covered by this order are all grades of sebacic acid, a dicarboxylic acid with the formula (CH2)8(COOH)2, which include but are not limited to CP Grade (500ppm maximum ash, 25 maximum APHA color), Purified Grade (1000ppm maximum ash, 50 maximum APHA color), and Nylon Grade (500ppm maximum ash, 70 maximum ICV color). The principal difference between the grades is the quantity of ash and color. Sebacic acid contains a minimum of 85 percent dibasic acids of which the predominant species is the C10 dibasic acid. Sebacic acid is sold generally as a free-flowing powder or flake.

Sebacic acid has numerous industrial uses, including the production of nylon 6/10 which is a polymer used for paintbrush and toothbrush bristles and paper machine felts, plasticizers, esters, automotive coolants, polyamides, polyester castings and films, inks and adhesives, lubricants, and polyurethane castings and coatings.

Sebacic acid is currently classifiable under subheading 2917.13.00.30 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding remains controlling.

Export Price

For Guangdong, SICC, and Tianjin we calculated export price (EP) in accordance with section 772(a) of the Act because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation and constructed export price (CEP) methodology was not otherwise warranted based on the facts of record. We calculated EP based on the same methodology used for purposes of the preliminary results with the exception that we used a different surrogate value for all respondents' ocean freight expenses. *See* Comment 7.

Normal Value

Section 773(c)(4) of the Act requires the Department to value the non-market economy (NME) producer's factors of production, to the extent possible, in one or more market economy countries that: (1) Are at a level of economic development comparable to that of the NME, and (2) Are significant producers of comparable merchandise. As stated in the *Preliminary Results*, the Department has determined in this case that India meets both statutory requirements for an appropriate surrogate country. In the final results, we have continued to rely on India as the surrogate country. Accordingly, we have calculated normal value (NV) using Indian surrogate values for the PRC producers' factors of production.

We calculated NV based on the same methodology used in the preliminary results with the following exceptions: (1) We adjusted the surrogate values of the by-product fatty acid and the co-

product capryl alcohol to reflect differences in concentration levels between these subsidiary products and their respective surrogate values; (2) We revised the foreign trucking surrogate value based on *Financial Express* price quotes (*see* Comment 3); (3) We included indirect labor amounts in our normal value calculations (*see* Comment 4); (4) We based the octanol surrogate value on the average of twelve Chemical Weekly price quotes reflecting each month of the POR submitted by the editor of *Chemical Weekly*; (5) We based the activated carbon surrogate value on price quotes obtained from Indian companies (*see* Comment 6); (6) We valued Hengshui Dongfeng Chemical Factory's (Hengshui's) and Zhong He Chemical Factory's (Zhong He's) refined glycerine, as well as Handan Fuyang Sebacic Acid Factory's (Handan's) by-product crude glycerine, using *Indian Import Statistics data;* (7) We included macropore resin in Handan's normal value calculation (*see* Comment 9); (8) We corrected a certain ministerial error with respect to Handan's packing costs (*see* Comment 9); (9) We replaced incorrect surrogate values for activated carbon and foreign rail freight with proper values for certain exporters' normal value calculations; (10) We revised the manner in which we calculated the deduction for sales and excise taxes from the *Chemical Weekly* price quotes; (11) We valued the castor oil which Hengshui purchased from both market and non-market economy suppliers using the factory's actual purchase price from a market-economy supplier.

Analysis of Comments Received

Comment 1: Concentration Levels of Subsidiary Products

The petitioner asserts that the Department erred in its normal value calculations by failing to adjust the values of the sebacic acid subsidiary products glycerine and fatty acid, as well as the co-product capryl alcohol, by their respective concentration levels. For Handan, the one manufacturer for which the Department did adjust the glycerine value to reflect its purity level, the petitioner asserts that the Department used the incorrect glycerine concentration percentage in its normal value calculation. Because Hengshui and Zhong He did not report the concentration levels at which they produce fatty acid, the petitioner urges the Department to use as facts available Handan's fatty acid concentration levels.

The respondents argue that the Department should not adjust subsidiary product values to reflect differences in their concentration levels, as these purity levels do not affect the products' usages or prices. The respondents urge the Department to follow its decision in the final determination of the investigation by refusing to adjust products' surrogate values by their concentration levels in those cases in which the products' Indian price purity levels are unknown. *See Notice of Final Determination of Sales at Less than Fair Value (LTFV Investigation): Sebacic Acid from the PRC,* 59 F.R. 28053, 28059 (May 31, 1994) (*Sebacic Acid Final Determination*). The respondents argue that there is no information on the record of this case which supports a determination of the purity level at which the co-product and subsidiary products were sold. However, should the Department decide to adjust the values for subsidiary products on the basis of their respective concentration levels, the respondents ask that the Department adjust sebacic acid's gross unit price to reflect the concentration level at which sebacic acid was sold during the period of review (POR).

DOC Position

For purposes of the final results, we adjusted the surrogate values for the subsidiary product fatty acid and the co-product capryl alcohol to reflect variations between the product's reported concentration levels and the surrogate value's concentration level. We did not, however, adjust the surrogate value for the by-product glycerine.

For purposes of the *Sebacic Acid Final Determination,* the Department stated that it would not adjust surrogate values to reflect purity levels when the surrogate value sources do not indicate levels of purity which can be used for comparison purposes. *Sebacic Acid Final Determination,* 59 F.R. 28053, 28059 (May 31, 1994). However, the Department may make surrogate value adjustments when information on the record provides a basis upon which the Department may infer Indian price quotes' purity percentages. *Notice of Final Determination of Sales at Less than Fair Value: Certain Paper Clips from the People's Republic of China,* 59 F.R. 51168, 51174 (October 7, 1994). In response to a November 16, 1999, inquiry regarding the concentration levels of *Chemical Weekly* price quotes, the editor of *Chemical Weekly* stated that chemical price quotes which do not mention the chemical's purity level are based on a one hundred percent purity level. *See* November 22, 1999, Memo to the File from Christopher Priddy. Because we based the surrogate values for capryl alcohol and fatty acid on *Chemical Weekly* price quotes which reflect a one hundred percent purity level, the Department adjusted these products' surrogate values to reflect the reported concentration levels at which they were produced.

For purposes of the final results, the Department derived the surrogate value for glycerine from import prices published in the *Indian Import Statistics.* The Department does not have adequate information to determine the purity level of glycerine generated by the respondents and the glycerine covered by the Indian Import prices. Because we lack this necessary information, the Department did not make concentration level adjustments for glycerine. Accordingly, the Department revised its normal value calculations in those instances in which it adjusted the glycerine value by its chemical concentration level.

Finally, we disagree with the respondents' argument that if we adjust the values for subsidiary products we should also adjust the respondents' reported gross unit prices of sebacic acid to reflect the concentration level at which the product was sold during the POR. We make an adjustment to the prices when there is a known difference between the concentration levels of the product and the price for the product. The respondents sold sebacic acid at a 99.5 percent concentration level, and the sebacic acid prices which the respondents reported to the Department correspond with the reported 99.5 percent concentration level. Therefore, the Department has no basis to make the type of adjustment requested by the respondents.

Comment 2: Caustic Soda Concentration Level

The petitioner argues that the Department undervalued the cost of caustic soda by interpreting *Chemical Weekly* prices as quotes for caustic soda sold at one hundred percent purity concentration levels. The petitioner states that it provided the Department with information indicating that liquid caustic soda is normally sold in 50 percent concentration levels and urges the Department to adjust the respondents' caustic soda surrogate values from an original caustic soda concentration level of 50 percent. *See* Petitioner's January 25, 1999, Surrogate Value Submission.

The respondents assert that the Department should follow precedent in this case and allow reductions for caustic soda purity levels based on a one hundred percent purity level

standard. The respondents state that the Department, in the original investigation, based its decision regarding caustic soda prices on a letter from *Chemical Weekly*'s editor reporting that *Chemical Weekly* caustic soda prices reference caustic soda at a one hundred percent purity level. *See Sebacic Acid From the People's Republic of China; Final Results of Antidumping Duty Administrative Review,* 59 Fed. Reg. 28053, 28059 (May 31, 1994). The respondents argue that *Chemical Weekly* caustic soda prices reflect a one hundred percent dry basis due to price valuation purposes for buyers of different caustic soda purity percentages who do not pay for water included in liquid caustic soda. The respondents urge the Department to follow its precedent from the *Sebacic Acid Final Determination* and adjust caustic soda percentages according to *Chemical Weekly* caustic soda prices referencing caustic soda of one hundred percent purity.

DOC Position

We agree with the respondents. On November 16, 1999, the Department submitted an inquiry to *Chemical Weekly* regarding the relationship between chemical purity levels and price quotes. The editor of *Chemical Weekly* responded that chemical price quotes which do not mention the chemical's purity level are based on a one hundred percent purity level and used caustic soda as an example. *See* November 22, 1999, Memo to the File from Christopher Priddy. Based on the *Chemical Weekly* editor's statement, the Department determined that the caustic soda price quote was based on caustic soda of one hundred percent purity. Because the respondents reported variances in the purity levels of the caustic soda used to produce sebacic acid, we have continued to adjust the respondents' caustic soda levels by a percentage of the one hundred percent purity based on *Chemical Weekly* caustic soda price.

Comment 3: Surrogate Value for Foreign Trucking Freight Rate

For purposes of our preliminary results, we used a trucking rate derived from an April 20,1994, *Times of India* newspaper article to value foreign trucking freight. The petitioner argues that the Department should use trucking rates quoted in a May 18, 1998, *Financial Express* article for purposes of valuing foreign trucking expenses for purposes of the final results. Because the article's rates are contemporaneous to the POR, the petitioner claims that the article's trucking rates are preferable to the rates used by the Department for purposes of the preliminary results.

The respondents argue that the *Financial Express* rates are aberrational, due to a temporary shortage of vehicles in India at the time of the trucking rate quotes. The respondents claim that the high freight rates were a regional phenomenon and do not represent a fundamental trucking freight rate increase throughout India. Accordingly, for purposes of the final results, the respondents request that the Department continue to value foreign trucking expenses with rates used in the preliminary results.

DOC Position

We agree with the petitioner that the May 18, 1998, *Financial Express* trucking freight rates are more appropriate surrogate values for trucking expenses than the rates used for purposes of the preliminary results, as the *Financial Express* rates are contemporaneous to the POR. However, as noted by the respondents and discussed in the *Financial Express* article, prices for certain routes reported in the article, such as Mumbai to Calcutta, reflected increases resulting from vehicle shortages during the week prior to May 18, 1998. Because the trucking rate increases occurred at the end of the POR and appear to be related to unusual circumstances, we believe that trucking freight quotes effective prior to the price increase more accurately represent trucking freight costs during the POR. Accordingly, for purposes of the final results, we made adjustments to *Financial Express* truck rates based on information contained in the article to derive rates that would have been effective prior to the price increase. *See* December 6, 1999, *Final Results Factors Valuation Memorandum.*

Comment 4: Indirect Labor

The petitioner argues that the Department erroneously excluded from its calculation of normal value indirect labor amounts reported by the respondents. The petitioner claims that the Department cannot assume that indirect labor is included in the factory overhead surrogate value, as the respondents have not explained what types of work tasks are included in the indirect labor category. Furthermore, the petitioner notes that in all prior proceedings of this case, the Department included indirect labor as reported by the respondents in the calculation of normal value.

The respondents counter by first noting that, contrary to the petitioner's assertion, they explained the types of indirect labor reported to the Department as labor such as maintenance work that is not directly involved in the production process. The respondents also claim that the Department's factory overhead calculation, based on the Reserve Bank of India Bulletin (RBI) data, includes an amount for indirect labor. Specifically, the respondents state that indirect labor is included in the expense line-item ''Repairs to Machinery.'' The respondents further argue that including indirect labor hours may lead to the Department's double counting of unskilled labor hours as all unskilled labor hours associated with the production of sebacic acid have been reported in the factors of production table under the field ''Unskilled Labor Hours.''

DOC Position

We disagree with the respondents' claim that indirect labor is included in the surrogate factory overhead rate; specifically, we do not interpret the expense line-item ''Repairs to Machinery'' as including indirect labor. Our examination of the RBI data indicates that labor costs, irrespective of whether these costs are direct or indirect, are reported under separate categories (i.e., ''Salaries, Wages and Bonuses,'' ''Provident Fund,'' and ''Employees' Welfare Expenses''). Therefore, we have no basis to conclude that either the cost element ''Repairs to Machinery'' or other cost items included in our factory overhead calculation contains labor costs associated with production.

With respect to the respondents' concern about our double-counting unskilled labor hours, we first note that unskilled labor hours reported in the responses pertain to labor directly related to the production of sebacic acid. The respondents further stated that reported indirect labor hours include all labor hours which have not been included in the direct labor total. Therefore, contrary to the respondents' assertion, there is no reason to believe that including reported indirect labor hours would lead to the double-counting of unskilled labor factors. Moreover, as noted by the petitioner, we have included reported indirect labor hours in our factors of production calculations in prior proceedings of this case, and we have followed our precedent in this administrative review by including indirect labor hours as reported by the respondents in our normal value calculation.

Comment 5: Octanol Valuation

The petitioner argues that the Department incorrectly based its octanol surrogate value on general category *Chemical Weekly* octanol prices rather than more product-specific *Indian Import Statistics* prices for 2-ethylhexanol. The respondents, on the other hand, assert that the Department correctly used *Chemical Weekly* ''octanol'' price quotes which, as a 1996 letter from *Chemical Weekly*'s editor explains, are for 2-ethylhexanol. The respondents state that the *Chemical Weekly* prices for the domestically-produced 2-ethylhexanol better represent 2-ethylhexanol's actual cost and price in the Indian domestic market than import prices reported in the *Indian Import Statistics.* According to the respondents, the *Indian Import Statistics* are not as reliable as the domestic *Chemical Weekly* prices, as the import prices are from three exporting countries and provide greater risk of aberrational sales or purity issues. The respondents argue that even though the Department has relied on import statistics in other administrative reviews, the Department should adopt domestic rather than import prices when deciding between two non-aberrational, contemporaneous surrogate values.

DOC Position

We agree with the respondents. When the Department is deciding between tax- and duty-exclusive, non-aberrational domestic and import prices for surrogate valuation purposes, the Department's preference is to use domestic prices. *Sulfanic Acid from the People's Republic of China; Final Results of Antidumping Duty Administrative Review,* 63 FR 63834, 63837–8 (Nov. 17, 1998). In this review, we have on the record a letter from the editor of *Chemical Weekly* which states that the *Chemical Weekly* octanol price corresponds to the domestic price for 2-ethylhexanol. Because we have no claims that either the domestic or import surrogate value is aberrational, the Department continued to value octanol using Indian domestic *Chemical Weekly* prices for 2-ethylhexanol. In order to have a more representative octanol price for this review, the Department used twelve octanol rates reflecting each month of the POR supplied by the editor of *Chemical Weekly. See* November 12, 1999, Letter to *Chemical Weekly* from Christopher Priddy; *see also* November 22, 1999, Memo to the File from Christopher Priddy.

Comment 6: Surrogate Value for Activated Carbon

For purposes of our preliminary results, we valued activated carbon using September 10, 1996, *Chemical Weekly* export prices. The petitioner placed on the record published activated carbon import values contemporaneous to the POR and argues that, because the Department has stated its preference for using data that includes a range of prices which are within the POR, we should value activated carbon using these import values for purposes of our final results.

The respondents contend that the activated carbon import prices are not effective for liquid phase activated carbon, which is used by the respondents, but, instead, represent prices for the more expensive gas phase activated carbon. In support of their claim, the respondents rely on the Department's past decision in which it found that (1) ''The import prices do not appear to correspond to the type of activated carbon used by Chinese manufacturers;'' and (2) The ''great disparity between the import and export prices of activated carbon suggests that these price quotes may be for different grades of activated carbon.'' *Sulfanilic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review* 62 FR 48597, 48600 (Sept. 16, 1997) (*Sulfanilic Acid*). Accordingly, the respondents urge the Department to conclude in this case, as we did in *Sulfanilic Acid,* that export prices are the best available information for valuing this factor.

DOC Position

We agree with the respondents that import values do not appear to correspond to the type of activated carbon used by the Chinese producers. The record of this review contains three sources of publicly available price data on activated carbon: *Chemical Weekly* import and export values and public price quotes obtained from Indian companies. Although the *Chemical Weekly* prices do not indicate the type or specification of activated carbon included in the export and import values, the price quotes submitted by the respondents include values for the ''powder'' form of activated carbon used by the manufacturers in this case.

In comparing prices from the three sources we found that Indian producers' price quotes and export values were comparable, but that import values were substantially higher than these prices. As noted by the respondents, the Department determined in *Sulfanilic Acid* that the disparity between import and export prices appears to be attributable to the fact that these prices may be for different types of activated carbon and that export prices are more representative of the type of activated carbon used by the Chinese producers. In *Sulfanilic Acid,* we also cited the less than fair value investigation of *Polyvinyl Alcohol from the PRC,* in which we found that Indian export prices for activated carbon are more reliable than import prices. *See Notice of Final Determination of Sales at Less Than Fair Value; Polyvinyl Alcohol From the People's Republic of China,* 61 FR 14057 (March 29, 1996).

Therefore, considering the above factors, we find that *Chemical Weekly* export prices and public price quotes obtained from Indian companies are more appropriate activated carbon surrogate values. We note that for purposes of our preliminary results we used *Chemical Weekly* export statistics to value activated carbon. For purposes of the final results, we have used public price quotes for ''powder'' activated carbon as the surrogate value for this production factor because these price quotes are supported by publicly available published information (*i.e.,* the export price) and, most importantly, are specific to the type of activated carbon used by the Chinese producers.

Comment 7: Ocean Freight Surrogate Value

The respondents argue that the Department incorrectly used a Sea-Land Services, Ltd. (Sea-Land) ocean freight rate for the shipment of oxalic acid to value the respondents' international shipping expenses for purposes of the preliminary results. The respondents assert that the Sea-Land ocean freight quote is an unacceptable ocean freight surrogate value for several reasons. First, the respondents argue that the Sea-Land quote was dated November 16, 1998, and, therefore, reflects an ocean freight rate outside the POR. The respondents also state that the Department should not use a Sea-Land ocean freight rate for the shipment of oxalic acid to Elizabeth, New Jersey, which references neither this review's actual subject merchandise, sebacic acid, nor the actual port of destination, New York, New York.

Moreover, the respondents maintain that Sea-Land's ocean freight quote is unacceptable, as it is a premium shipping company rate obtained through private rather than public channels for comparison and not commercial purposes. Because the respondents view Sea-Land's per metric ton rate as significantly higher than previous administrative reviews' ocean

freight surrogate values, the respondents argue that Sea-Land's quote does not accurately reflect ocean freight costs set by Chinese market forces. The respondents urge the Department to follow its precedence in former administrative reviews or use Federal Maritime Commission rates to value ocean freight. In the alternative, the respondents urge the Department to use ocean freight quotes provided in the respondents' August 26, 1999, submission from Sea-Land, Hanjin Shipping, or American International Cargo Services.

The petitioner asserts that the Department correctly used the Sea-Land ocean freight value which the petitioner submitted on January 25, 1999. First, the petitioner states that the Sea-Land ocean freight rate was obtained on November 16, 1998, but was effective on May 1, 1998, and, therefore, was within the POR. The petitioner acknowledges that Sea-Land's ocean freight quote is for Elizabeth, New Jersey, a city geographically proximate to New York, New York, and argues that a price differential between the two port cities would be minimal. The petitioner also maintains that even though it obtained the ocean freight quote from a Sea-Land sales agent, the rate is publicly available on Sea-Land's website.

The petitioner argues that the respondents have provided the Department no information to support their assertions that Sea-Land is a premier shipping company and that the Sea-Land container rate is only a comparison rate. In addressing the respondents' arguments concerning price disparities between Sea-Land's and prior administrative proceedings' ocean freight rates, the petitioner argues that because other Departmental proceedings' surrogate values are at least three years old, they are inaccurate and do not satisfy the Department's preference for contemporaneous surrogate values. The petitioner urges the Department to use the Sea-Land quote for purposes of the final results and cited several past Departmental proceedings in which the Department relied on Sea-Land shipping quotes to value ocean freight.

DOC Position

For purposes of these final results, we used ocean freight prices provided to the Department by Maersk, Inc. (Maersk) as surrogate values for ocean freight. To ascertain the comparability of Sea-Land's and other international freight carriers' prices for the POR, the Department contacted Maersk on November 5, 1999, and requested that Maersk provide its POR-applicable freight quotes and the maximum number of pounds which Maersk can ship in a twenty-foot container. Maersk provided May 1, 1997, and May 1, 1998, per-container ocean freight rates which varied only slightly from the May 1, 1998, Sea-Land rate provided by the petitioner. *See* November 8, 1999, and November 9, 1999, Memos to the File from Christopher Priddy. However, the maximum number of pounds which Maersk reported it can ship in a twenty-foot container deviated significantly from the maximum number of pounds used by the petitioner to calculate the Sea-Land per metric ton rate in its January 25, 1999, submission. We contacted Sea-Land but could not corroborate the maximum number of pounds it stated it can ship in a twenty-foot container with the amount used in the petitioner's ocean freight calculations. *See* November 10, 1999, Memo to the File from Christopher Priddy.

Maersk's assertion of the maximum number of pounds capable of being shipped in a twenty-foot container is consistent with information previously filed with the Department. *See* June 20, 1997, Memo to the File from Charles Riggle for *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Romania; Final Results of Antidumping Duty Administrative Review,* 62 FR 32292 (June 13, 1997). Because we corroborated the maximum number of pounds which Maersk can ship to customers in a twenty-foot container, we used a per-metric ton ocean freight surrogate value based on the information provided by Maersk. The Department has relied on Maersk ocean freight rates in previous cases for ocean freight valuation purposes. *See Tapered Roller Bearings from Romania,* 62 FR 32232 (June 13, 1997); *Manganese Metal From the People's Republic of China; Final Results of Second Antidumping Administrative Review,* 64 FR 49447 (September 13, 1999); *Notice of Preliminary Determination of Sales at Less than Fair Value and Postponement of Final Determination: Creatine Monohydrate from the PRC,* 64 FR 41375 (July 30, 1999). Our decision to use Maersk information as the basis for an ocean freight surrogate value is also based on the fact that Maersk provided rates effective at both the beginning and end of the POR. By using an average of these two values, the Department adopted an ocean freight surrogate value more reflective of the POR than the single-month ocean freight rate supplied by Sea-Land. Although certain respondents made shipments of sebacic acid to Chicago, Illinois, the Department was unable to obtain freight rates through to Chicago. We have accordingly used the Maersk international freight rate to New York in valuing the respondents' shipments to Chicago.

Comment 8: By-Product Glycerine Valuation

The respondents argue that the Department should value glycerine for Hengshui and Zhong He using either an averaged value for refined and crude glycerine or the surrogate value for 95 percent refined glycerine. The respondents state that the Chinese sebacic acid manufacturers produce both crude and refined glycerine and that the respondents provided the refined glycerine's technical specifications. The respondents assert that the Department has on the record the factors used for producing the refined glycerine, as well as statements by Hengshui and Zhong He that they produce 95 percent refined glycerine. Accordingly, for Hengshui and Zhong He, the respondents urge the Department to adjust the glycerine values to 95 percent purity glycerine prices or use averaged crude and refined quality glycerine values.

The petitioner maintains that the Department should adjust the glycerine surrogate value to reflect an 85 percent concentration level for glycerine produced by Hengshui and Zhong He and an 80 percent concentration level for glycerine produced by Handan. The petitioner argues that the respondents' technical specifications regarding refined glycerine are unacceptable, as the respondents only provide a statement concerning the 95 percent purity percentage of the produced glycerine. The petitioner also argues that the respondents have reported in neither narrative nor diagram form the glycerine refinement process and the stage at which this refinement occurs. Moreover, the petitioner alleges that the respondents have provided no information to support their claim that the reported glycerine production factors are for the 95 percent refined glycerine.

DOC Position

We agree with the respondents and used a surrogate value for refined glycerine to value Hengshui's and Zhong He's glycerine by-products and a crude glycerine surrogate value for Handan's by-product glycerine. For purposes of this administrative review, both Hengshui and Zhong He reported in their technical description of the sebacic acid production stages that

glycerine was later purified by the factories to 95 percent refined glycerine. We believe that Hengshui's and Zhong He's statements provide a reasonable basis for determining that the glycerine purification costs were included in the factors of production which the two respondents reported to the Department. Furthermore, in the prior review of this proceeding the Department verified that Handan and Hengshui produced and sold refined glycerine. The Department grants a by-product credit based on the subsidiary product's refined value in those cases in which the factors of production to convert the by-product to the refined grade have already been included in the subject merchandise's overall production costs. *Sebacic Acid form the PRC; Final Results of Antidumping Duty Administrative Review,* 63 FR 43373, 43378 (Aug. 13, 1998). Because the Department concluded that costs for Hengshui's and Zhong He's glycerine refinement were included in the sebacic acid production costs and because Hengshui and Zhong He reported quantities of refined glycerine produced, we used the refined glycerine surrogate values for glycerine produced by Hengshui and Zhong He. We continued using the crude glycerine surrogate to value Handan's by-product glycerine.

We have calculated a new refined glycerine surrogate value for purposes of the final results. The Department's basis for a glycerine surrogate value for purposes of the preliminary results was based on *Chemical Weekly* price quotes for glycerine in the Indian domestic market. *See Preliminary Results Factors Valuation Memorandum,* August 2, 1999, at Attachment 10. For purposes of valuing refined and crude glycerine for the final results, we used the averages of *Indian Import Statistics* data provided by the respondents for refined and chemically pure as well as crude glycerine from Japan, Malaysia, the Netherlands, and the United States. Although the *Chemical Weekly* price quotes used for purposes of valuing glycerine in the preliminary results were contemporaneous to the POR, these price quotes did not reference glycerine type. In order to accurately value the two types of glycerine which the respondents reported as by-products of sebacic acid, the Department used *Indian Import Statistics* data which referenced the type of glycerine for which the prices were provided.

Comment 9: Ministerial Errors Alleged by the Petitioner

The petitioner maintains that the Department should correct the following ministerial errors discussed in the Department's *Preliminary Results Factors Valuation Memorandum:* (1) The Department should include a value for sodium chloride in Zhong He's normal value calculation as Zhong He reported that it used this input; (2) In Handan's normal value calculation, the Department should include a value for macropore resin as Handan reported that it used this chemical; (3) The Department should correct Handan's total packing costs.

The respondents disagree with the petitioner's assertion regarding the inclusion of a sodium chloride value in Zhong He's normal value calculation. The respondents assert that Zhong He stated in its supplemental questionnaire response that it did not use sodium chloride during the POR and that the Department correctly omitted sodium chloride from Zhong He's normal value calculation.

DOC Position

We agree with the petitioner concerning alleged errors (2) and (3) and have corrected for these errors; we agree with the respondents concerning alleged error (1) and continued to omit sodium chloride from Zhong He's normal value calculation.

Final Results of the Review

As a result of our analysis of the comments we received, we determine that the following weighted-average margins exist for the period July 1, 1997 through June 30, 1998:

Manufacturer/exporter	Margin (percent)
Tianjin Chemicals I/E Corp.	2.74
Sinochem International Chemicals Corp.	0.00
Guangdong Chemicals I/E Corp.	9.01
PRC-Wide Rate	243.40

Assessment Rates

The Department shall determine and the Customs Service shall assess antidumping duties on all appropriate entries. We have calculated importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total estimated entered value of the examined sales. We estimated each exporter's entered values by subtracting international movement expenses from each exporter's reported gross unit prices. These rates will be assessed uniformly on all entries of that particular importer made during the POR. Pursuant to 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties all entries for any importer for whom the assessment rate is deminimis (*i.e.*, less than 0.50 percent). The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for Tianjin Chemicals and Guangdong Chemicals will be the rates stated above, and the cash deposit rate for SICC will be zero; (2) For companies previously found to be entitled to a separate rate and for which no review was requested, the cash deposit rates will be the rate established in the most recent review of that company; (3) For all other PRC exporters of subject merchandise, the cash deposit rates will be 243.40 percent, the PRC country-wide rate; and (4) The cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). *See Antidumping and Countervailing Duty Proceedings: Administrative Protective Order Procedures; Procedures for Imposing Sanction for Violation of a Protective Order,* 63 FR 24391, 24404 (May 4, 1998). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of the APO is a sanctionable violation.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 6, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–32224 Filed 12–10–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Practitioner Records Maintenance and Disclosure Before the Patent and Trademark Office

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce (DOC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing and proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 11, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, D.C. 20230 or via the Internet (LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Nora Cordova, Patent and Trademark Office, Box OED, Washington, D.C. 20231, by telephone at (703) 306–4097.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Commissioner of Patents and Trademarks, under the direction of the Department of Commerce, has the authority to establish regulations for the conduct of proceedings in the Patent and Trademark Office (PTO) under 35 USC 6(a) and to prescribe regulations governing the conduct of agents, attorneys or other persons representing applicants and other parties before the PTO (35 USC 31).

Disciplinary Rule 37 CFR 10.112(c)(3) of the PTO Code of Professional Responsibility requires that an attorney or agent maintain complete records of all funds, securities and other properties of clients coming into his or her possession, and to render appropriate accounts to the client regarding the funds, securities and other properties. These record keeping requirements are necessary to maintain the integrity of client property. Similar record keeping is required by each State Bar of its attorneys.

The PTO Code of Professional Responsibility (37 CFR 10.20 to 10.112) requires that an attorney or agent will report knowledge of certain violations of the Code to the PTO, in accordance with 37 CFR 10.23(c)(16) and 10.24. This collection requirement is necessary to investigate and possibly prosecute violations of the PTO Code. Under 35 USC 32, the Commissioner may, after notice and opportunity for a hearing, suspend, exclude or disqualify any practitioner from further practice before the PTO based on noncompliance with the regulations established under § 31 of this title.

The information collected (reports of alleged violations of the PTO Code of Professional Responsibility) is used by the Director of Enrollment and Discipline (OED) to conduct investigations and prosecute violations as appropriate (37 CFR 10.131(a)&(b)). If this information is not collected, the Director of OED would have no knowledge of alleged violations and would be unable to enforce this provision of the PTO Code.

II. Method of collection

By mail, facsimile, or hand carry when an individual is required to participate in the information collection.

III. Data

OMB Number: 0651–0017.

Form Numbers: N/A.

Type of Review: Renewal without change.

Affected Public: Individuals or households; business or other for-profit; Federal Government.

Estimated Number of Respondents: 230 responses for record keeping maintenance and 100 responses for violation reporting per year.

Estimated Time Per Response: It is estimated to take 9 hours for record keeping maintenance and 5 hours for violation reporting.

Estimated Total Annual Respondent Burden Hours: 2570 hours per year.

Estimated Total Annual Respondent Cost Burden: $0 (no capital start-up or maintenance expenditures are required). Using the professional hourly rate of $175.00 for associate attorneys in private firms and the hourly rate of $25.00 for a para-professional/clerical worker, the PTO estimates $139,250 per year for salary costs associated with respondents.

Item	Estimated time for response (hours)	Estimated annual burden hours	Estimated annual responses
Record Keeping Maintenance	9	2070	230
Violation Reporting	5	500	100
Totals		2570	330

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 7, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–32160 Filed 12–10–99; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

December 7, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 13, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for special shift and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 69057, published on December 15, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 7, 1999.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 8, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on December 13, 1999, you are directed to adjust the current limits for the following categories, as provided for under the terms of the current bilateral textile agreement:

Category	Adjusted twelve-month limit [1]
Group II	
237, 239, 330–332, 333/334/335, 336, 338/339, 340–345, 347/348, 349, 350/650, 351, 352/652, 353, 354, 359–C/659–C [2], 359–H/659–H [3], 359–O [4], 431–444, 445/446, 447/448, 459, 630–632, 633/634/635, 636, 638/639, 640, 641–644, 645/646, 647/648, 649, 651, 653, 654, 659–S [5], 659–O [6], 831–844, and 846–859, as a group.	738,710,966 square meters equivalent.
Sublevels in Group II	
331	503,023 dozen pairs.
336	148,809 dozen.
338/339	975,457 dozen.
638/639	6,749,460 dozen.
Within Group II Sub-group	
636	396,209 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060; Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[4] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6505.90.1540 and 6505.90.2060 (Category 359–H).

[5] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[6] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–32161 Filed 12–10–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Thailand

December 7, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 14, 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 these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the

CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 58369, published on October 30, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 7, 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 27, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the period which began on January 1, 1999 and extends through December 31, 1999.

Effective on December 14, 1999, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Group II	
237, 331–348, 350–352, 359–H [2], 359pt. [3], 431, 433–438, 440, 442–448, 459pt. [4], 631, 633–652, 659–H [5], 659pt. [6], 831, 833–838, 840–858 and 859pt. [7], as a group.	344,934,409 square meters equivalent.
Sublevels in Group II	
345	368,632 dozen.
438	20,105 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060.

[3] Category 359pt.: all HTS numbers except 6505.90.1540, 6505.90.2060 (Category 359–H); and 6406.99.1550.

[4] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[5] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[6] Category 659pt.: all HTS numbers except 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6406.99.1510 and 6406.99.1540.

[7] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–32162 Filed 12–10–99; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 00–C0002]

Baby's Dream Furniture, Inc., Corporation, Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20. Published below is a provisionally-accepted Settlement Agreement with Baby's Dream Furniture, Inc., a corporation, containing a civil penalty of $200,000.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by December 28, 1999.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 00–C0002, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: William J. Moore, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0626, 1348.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: December 8, 1999.

Sadye E. Dunn,

Secretary.

Settlement Agreement and Order

1. This Agreement, made by and between the staff of the U.S. Consumer Product Safety Commission, (''the staff,'' or ''the CPSC'') and Baby's Dream Furniture, Inc., (''Baby's Dream'') a corporation, in accordance with 16 CFR 1118.20 of the Commission's Procedures for Investigations, Inspections, and Inquiries under the Consumer Product Safety Act (''CPSA''), is a Settlement, a complete resolution of the staff allegations set forth below.

I. The Parties

2. The CPSC is an independent federal regulatory agency responsible for the enforcement of the CPSA, 15 U.S.C. 2051–2084.

3. Baby's Dream Furniture, Inc, is a corporation organized and existing under the laws of the State of Georgia. Its principal offices are located at Highway 41 North, Industrial Boulevard, Buena Vista, GA 31803.

II. The Product

4. Between December, 1994 and May, 1997 Baby's Dream manufactured approximately 13,000 ''Generation'' model cribs in Georgia and distributed them in the United States. Baby's Dream is, therefore, a manufacturer and distributor of a consumer product in United States commerce. 15 U.S.C. 2052(a)(1), (4), (5) and (11).

5. The Generation crib that is subject of this Agreement has a drop gate mechanism that is attached to the top rail of the front frame using four hinges. This mechanism allowed for opening and closing of the drop gate to permit access inside the crib (rather than the whole frame moving up and down).

III. Staff Allegations

6. The heavy weight of the oak gate and the use of four hinges on oak Generation cribs manufactured from December 1994 through May 1997, allow a finger to get seriously injured if caught between the bottom rail of the movable drop gate and the top rail of the stationary front frame while the drop gate is being operated.

7. Between March, 1997 and December, 1997, Baby's Dream received nine reports of injuries that occurred while the Generation crib drop gate was being operated. The injuries, to one adult and eight babies, included avulsion of fingertips, partial amputation of finger tips and crushing of finger tips. On December 30, 1997, Baby's Dream reported the problem to the CPSC.

8. Baby's Dream obtained information which reasonably supported the conclusion that its Generation crib contained a defect which could create a substantial product hazard but failed to report that information in a timely manner as required by section 15(b) of the CPSC, 15 U.S.C. 2064(b).

IV. Response of Baby's Dream

9. Baby's Dream denies the allegations of the staff that the Generation cribs contain a defect which could create a substantial product hazard pursuant to section 15(a) of the CPSA, 15 U.S.C. 2064(a), denies that it violated the reporting requirements of section 15(b) of the CPSA, 15 U.S.A. 2064(b), and further denies the other allegations of the CPSA as stated herein.

10. Baby's Dream reported the problem with the Generation cribs described above and voluntarily implemented a recall to repair the cribs under the CPSA fast track program.

11. Baby's Dream is entering into this Settlement Agreement to avoid incurring the additional legal costs associated with contesting a fine action against the CPSA in protracted litigation, and this Agreement does not constitute, and is not evidence of, an admission of liability or wrongdoing by Baby's Dream.

V. Agreement of the Parties

12. The Commission has jurisdiction over this matter and Baby's Dream under the Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*

13. Baby's Dream knowingly, voluntarily and completely waives any rights it may have to: (1) An administrative or judicial hearing with respect to the staff allegations discussed in paragraphs 4 through 8 above; (2) judicial review or other challenge or contest of the validity of the Commission's Order; (3) a determination by the Commission as to whether a violation of section 15(b) of the CPSA, 15 U.S.C. 2064(b), has occurred; and (4) a statement of findings of fact and conclusion of law with regard to the staff allegations.

14. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on public record and in the **Federal Register** in accordance with 16 CFR 1118.20. The Settlement Agreement and Order becomes effective upon final acceptance by the Commission and its service upon Baby's Dream.

15. For purposes of Section 6(b) of the CPSA, 15 U.S.C. 2055(b), upon final acceptance of this Settlement Agreement by the Commission, the parties agree that the Commission may publicize the terms of the Settlement Agreement and Order.

16. Baby's Dream shall pay the Consumer Product Safety Commission a civil penalty in the amount of two hundred thousand dollars ($200,000.00). The payment, by check made out to the United States Treasury, shall be dated on or before December 31, 1999, and placed in the Commission's possession on or before the close of business, December 29, 1999, following final acceptance of the Settlement Agreement and Order.

17. Baby's Dream agrees to entry of the attached Order, which is incorporated herein by reference, and to be bound by its terms.

18. This Settlement Agreement is binding upon Baby's Dream and the assigns or successors of Baby's Dream.

19. Agreements, understandings, representations, or interpretations made outside this Settlement Agreement and Order may not be used to vary or to contradict its terms.

Baby's Dream Furniture, Inc.

Dated: November 3, 1999.

By:

Goshtsab (David) Felfeli,

President, Baby's Dream Furniture, Inc.

U.S. Consumer Product Safety Commission

Alan H. Schoem,

Assistant Executive Director, Office of Compliance.

Eric L. Stone,

Director, Legal Division, Office of Compliance.

Dated: November 29, 1999.

By:

William J. Moore, Jr.,

Attorney, Legal Division, Office of Compliance.

Order

Upon consideration of the Settlement Agreement entered into between Baby's Dream Furniture, Inc., a corporation, and the staff of the U.S. Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Baby's Dream Furniture, Inc., and it appearing that the Settlement Agreement and Order is in the public interest, it is

Ordered, that the Settlement Agreement be, and hereby is, accepted, and it is

Further ordered, that Baby's Dream Furniture, Inc. shall pay the Commission a civil penalty in the amount of *TWO HUNDRED THOUSAND AND* 00/100 dollars, ($200,000.00) by check to the U.S. Treasury dated December 31, 1999, delivered to the Commission on or before the close of business, December 29, 1999, after service of this Final Order upon Baby's Dream Furniture, Inc.

Provisionally accepted and Provisional Order issued on the 8th day of December, 1999.

By Order of the Commission.

Sadye E. Dunn,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 99–32236 Filed 12–10–99; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Corrected Air Force A–76 Initiatives Cost Comparisons and Direct Conversions (As of 30 Sep 1999)

The Air Force is in the process of conducting the following A–76 initiatives. Cost comparisons are public-private competitions. Direct conversions are functions that may result in a conversion to contract without public competition. These initiatives were announced and in-progress as of 30 Sep 1999, include the installation and state where the cost comparison or direct conversion is being performed, the total authorizations under study, public announcement date and actual or anticipated solicitation date. The following initiatives are in various stages of completion.

Installation	State	Function(s)	Total authorizations	Public announcement date	Solicitation issued or scheduled date
Cost Comparisons					
ANDERSEN	GUAM	SUPPLY AND TRANSPORTATION	317	25–Jun-98	28–May-99
ANDREWS	MD	AIRCRAFT MAINTENANCE AND SUPPLY	815	25–Jul-97	26–May-99
ANDREWS	MD	GROUNDS MAINTENANCE	9	17–Dec-98	17–Nov-99
ANDREWS	MD	HEATING SYSTEMS	22	17–Dec-98	17–Nov-99
BARKSDALE	LA	PROTECTIVE COATING	13	14–Dec-98	31–Oct-99
BEALE	CA	BASE OPERATING SUPPORT	383	08–Sep-99	07–Mar-01

Installation	State	Function(s)	Total authorizations	Public announcement date	Solicitation issued or scheduled date
BOLLING	DC	SUPPLY AND TRANSPORTATION	164	01–Dec-98	03–Jan-00
CARSWELL	TX	BASE OPERATING SUPPORT	69	13–Jun-96	30–Dec-99
CHEYENNE MTN	CO	CIVIL ENGINEERING	139	08–May-98	01–Aug-00
DOVER	DE	HEATING SYSTEMS	11	07–Jan-99	03–Jan-00
EDWARDS	CA	BASE OPERATING SUPPORT	553	09–Dec-98	08–Nov-00
EDWARDS	CA	TRANSIENT AIRCRAFT MAINTENANCE/AEROSPACE GROUND EQUIPMENT.	136	06–Nov-98	16–Dec-99
EGLIN	FL	ADMINISTRATIVE SUPPORT	52	22–Sep-99	TBD
EGLIN	FL	CIVIL ENGINEERING	200	03–Dec-96	21–Jul-98
EIELSON	AK	HOUSING MANAGEMENT	16	17–Nov-97	18–May-99
ELMENDORF	AK	BASE SUPPLY	210	26–Mar-99	17–Jan-00
FAIRCHILD	WA	HEATING SYSTEMS	15	16–Mar-99	31–Oct-99
GREATER PITTSBURG	PA	BASE OPERATING SUPPORT	77	13–Jun-96	14–Nov-99
GRISSOM	IN	BASE OPERATING SUPPORT	133	13–Jun-96	01–Oct-99
HANSCOM AFB	MA	BASE SUPPLY	70	10–Nov-98	30–Oct-99
HANSCOM AFB	MA	CIVIL ENGINEERING	201	09–Dec-98	15–Dec-99
HANSCOM AFB	MA	EDUCATION/TRAINING AND PERSONNEL	14	25–Nov-98	01–Dec-99
HILL AFB	UT	BASE OPERATING SUPPORT	730	30–Sep-98	20–Sep-00
HOLLOMAN AFB	NM	MILITARY FAMILY HOUSING MAINTENANCE	66	12–May-97	01–Oct-99
HOMESTEAD	FL	BASE OPERATING SUPPORT	106	13–Jun-96	15–Jan-00
HURLBURT COM FL	FL	ADMINISTRATIVE SUPPORT	41	28–Apr-99	09–Mar-01
HURLBURT COM FL	FL	BASE SUPPLY	43	15–Jul-98	01–Jan-00
HURLBURT COM FL	FL	COMMUNICATION FUNCTIONS	50	31–Jul-98	19–Jun-00
KEESLER	MS	MULTIPLE SUPPORT FUNCTIONS	726	21–Sep-99	TBD
KIRTLAND	NM	BASE COMMUNICATIONS	228	06–Nov-97	04–Jun-99
KIRTLAND	NM	ENVIRONMENTAL	32	24–Nov-98	15–Dec-99
LACKLAND	TX	MULTIPLE SUPPORT FUNCTIONS	1587	26–Jan-99	10–Nov-99
LANGLEY	VA	GENERAL LIBRARY	11	22–Dec-98	04–Oct-99
LANGLEY	VA	MILITARY FAMILY HOUSING MAINTENANCE	16	24–Nov-97	11–Jun-99
LOS ANGELES	CA	COMMUNICATIONS OPERATIONS AND MAINTENANCE FUNCTIONS.	85	01–Jul-97	25–Nov-98
MALMSTROM	MT	BASE COMMUNICATIONS	85	06–Oct-97	01–Dec-99
MARCH	CA	BASE OPERATING SUPPORT	195	13–Jun-96	15–Nov-99
MAXWELL	AL	MULTIPLE SUPPORT FUNCTIONS	814	28–Apr-98	22–Mar-99
MC CHORD	WA	GROUNDS MAINTENANCE	11	14–Jun-99	05–Jun-00
MC CHORD	WA	HEATING SYSTEMS	11	23–Sep-97	30–Mar-99
MC CHORD	WA	MILITARY FAMILY HOUSING MAINTENANCE	15	23–Sep-97	03–Mar-99
MINN/ST PAUL	MN	BASE OPERATING SUPPORT	83	13–Jun-96	11–Aug-98
MULTIPLE INSTLNS		ADMINISTRATIVE SWITCHBOARD	44	19–Jun-97	31–Dec-99
CROUGHTON	UK				
FAIRFORD	UK				
LAKENHEATH	UK				
MILDENHALL	UK				
MOLESWORTH	UK				
MULTIPLE INSTLNS		ADMINISTRATIVE SWITCHBOARD	50	19–Jun-97	31–Dec-99
RAMSTEIN	GERMY				
SEMBACH	GERMY				
SPANGDAHLEM	GERMY				
MULTIPLE INSTLNS		COMMUNICATION FUNCTIONS	141	11–Mar-99	11–Nov-99
GRISSOM	IN				
GENERAL MITCHELL	WI				
MINN/ST PAUL	MN				
NEW ORLEANS NAS	LA				
CARSWELL	TX				
HOMESTEAD	FL				
MARCH	CA				
WESTOVER	MA				
YOUNGSTOWN MUNI	OH				
WILLOW GROVE	PA				
GREATER PITTSBURG.	PA				
MULTIPLE INSTLNS		COMMUNICATION FUNCTIONS	208	03–Aug-99	01–May-00
LANGLEY	VA				
HILL AFB	UT				
MULTIPLE INSTLNS		EDUCATION SERVICES	153	07–Jan-99	15–Nov-99
HOWARD	PANMA				
MOODY	GA				
MINOT	ND				
MT HOME	ID				
NELLIS	NV				
SHAW	SC				

Installation	State	Function(s)	Total authorizations	Public announcement date	Solicitation issued or scheduled date
WHITEMAN	MO				
LAJES	AJORE				
ELLSWORTH	SD				
SEYMOUR JOHNSON	NC				
HOLLOMAN AFB	NM				
DYESS	TX				
DAVIS MONTHAN	AZ				
CANNON	NM				
BARKSDALE	LA				
KEFLAVIK	ICELD				
LANGLEY	VA				
BEALE	CA				
MULTIPLE INSTLNS		EDUCATION/TRAINING AND PERSONNEL	94	25–Mar-98	24–May-99
BUCKLEY	CO				
F E WARREN	WY				
PATRICK	FL				
PETERSON	CO				
FALCON	CO				
VANDENBERG AFB	CA				
MULTIPLE INSTLNS		MULTIPLE SUPPORT FUNCTIONS	124	14–Jul-99	30–Dec-00
CROUGHTON	UK				
FAIRFORD	UK				
MOLESWORTH	UK				
MULTIPLE INSTLNS		PRECISION MEASUREMENT EQUIPMENT LABORATORY (PMEL).	1516	24–Sep-98	29–Oct-99
MULTIPLE INSTLNS		TRANSIENT AIRCRAFT MAINTENANCE	24	07–Jul-99	01–Apr-00
RAMSTEIN	GERMY				
SPANGDAHLEM	GERMY				
MULTIPLE INSTLNS		TRANSIENT AIRCRAFT MAINTENANCE	15	07–Jul-99	01–Apr-00
LAKENHEATH	UK				
MILDENHALL	UK				
NEW BOSTON	NH	BASE OPERATING SUPPORT	48	03–Dec-97	01–Nov-99
NEW ORLEANS NAS	LA	BASE OPERATING SUPPORT	45	13–Jun-96	01–Dec-99
OFFUTT	NE	BASE OPERATING SUPPORT	1608	30–Sep-98	31–Jan-00
PATRICK	FL	SUPPLY AND TRANSPORTATION	43	14–May-98	01–Jun-00
ROBINS	GA	ADMINISTRATIVE TELEPHONE SWITCHBOARD	17	17–Mar-99	23–Dec-99
ROBINS	GA	BASE SUPPLY	133	01–Apr-99	30–Jan-00
ROBINS	GA	EDUCATION SERVICES	57	07–Jan-99	30–Sep-99
SCOTT	IL	PERSONNEL SERVICES	236	25–Jun-99	19–Feb-01
SCOTT	IL	ADMINISTRATIVE SWITCHBOARD	86	05–Aug-99	TBD
SCOTT	IL	BASE SUPPLY	102	03–Jun-97	28–Aug-98
SCOTT	IL	COMMUNICATIONS OPERATIONS AND MAINTENANCE FUNCTIONS.	178	19–Mar-98	10–Nov-99
SCOTT	IL	MEDICAL FACILITY MAINTENANCE	8	09–Jan-98	05–Aug-98
SEMBACH	GERMY	COMMUNICATION FUNCTIONS	48	18–Dec-98	30–Nov-99
SHAW	SC	PROTECTIVE COATING	12	14–Dec-98	02–Jul-99
SHEPPARD	TX	MULTIPLE SUPPORT FUNCTIONS	540	21–Sep-99	TBD
TINKER	OK	BASE SUPPLY	152	30–Nov-98	08–Oct-99
TINKER	OK	CIVIL ENGINEERING	567	15–Apr-97	26–Mar-98
TINKER	OK	EDUCATION SERVICES	54	16–Nov-98	08–Oct-99
TINKER	OK	ENVIRONMENTAL	53	24–Nov-98	08–Oct-99
TRAVIS	CA	VEHICLE OPERATIONS AND MAINTENANCE	131	15–Jul-98	23–Dec-99
USAF ACADEMY	CO	BASE OPERATING SUPPORT	108	08–May-98	15–Jan-00
USAF ACADEMY	CO	CIVIL ENGINEERING	497	01–Dec-98	15–Feb-00
USAF ACADEMY	CO	COMMUNICATION FUNCTIONS	120	20–May-99	19–May-00
USAF ACADEMY	CO	FOOD SERVICES	297	08–May-98	21–Apr-99
USAF ACADEMY	CO	SERVICES ACTIVITIES	75	08–May-98	17–Sep-99
VANDENBERG AFB	CA	TRAINER FABRICATION	12	24–Nov-97	15–Aug-99
WHITEMAN	MO	UTILITIES PLANT	11	18–Aug-99	14–Aug-00
WILLOW GROVE	PA	BASE OPERATING SUPPORT	52	13–Jun-96	28–Sep-98
WRIGHT PATTERSON	OH	CIVIL ENGINEERING	104	21–Aug-98	03–Mar-00
WRIGHT PATTERSON	OH	CIVIL ENGINEERING	698	15–Aug-97	27–Aug-99
WRIGHT PATTERSON	OH	COMMUNICATION FUNCTIONS	319	21–Aug-98	18–Oct-99
WRIGHT PATTERSON	OH	LABORATORY SUPPORT SERVICES	127	21–Aug-98	22–Oct-99
YOUNGSTOWN MUNI	OH	BASE OPERATING SUPPORT	92	13–Jun-96	14–Sep-98
DIRECT CONVERSIONS					
ALTUS	OK	MEDICAL STENOGRAPHY	2	17–Nov-97	01–Jul-98
ANDERSEN	GUAM	AIR TRAFFIC CONTROL	12	14–Sep-99	27–May-00
ANDREWS	MD	MEDICAL FACILITY MAINTENANCE	11	09–Oct-97	22–Sep-99

Installation	State	Function(s)	Total authorizations	Public announcement date	Solicitation issued or scheduled date
ASHEVILLE	NC	COMPUTER SYSTEMS MAINTENANCE	10	17–Feb-99	01–Mar-00
BARKSDALE	LA	ADMINISTRATIVE SWITCHBOARD	10	04–Aug-98	01–Nov-99
BARKSDALE	LA	HOSPITAL SERVICES	3	01–Dec-97	15–Jul-99
BEALE	CA	ADMINISTRATIVE SWITCHBOARD	10	07–Jul-99	30–Nov-99
CANNON	NM	PROTECTIVE COATING	2	07–Jan-99	15–Dec-99
CANNON	NM	TRANSIENT AIRCRAFT MAINTENANCE/AEROSPACE GROUND EQUIPMENT.	13	27–Aug-98	10–Nov-99
CHEYENNE MTN	CO	COMMUNICATION FUNCTIONS	385	08–May-98	13–Aug-99
DAVIS MONTHAN	AZ	PROTECTIVE COATING	9	24–Jun-98	01–Dec-99
DAVIS MONTHAN	AZ	RAILROAD TRANSPORTATION SERVICES	2	11–Aug-98	01–Dec-99
DYESS	TX	ADMINISTRATIVE TELEPHONE SWITCHBOARD	9	12–Nov-98	30–Nov-99
ELLSWORTH	SD	ENVIRONMENTAL	7	05–Nov-98	23–Dec-98
ELLSWORTH	SD	GENERAL LIBRARY	7	16–Jul-98	30–Sep-99
F E WARREN	WY	BASE COMMUNICATIONS	93	30–Oct-97	15–Dec-99
GRAND FORKS	ND	MUNITIONS MAINTENANCE	5	17–May-99	13–Oct-00
KIRTLAND	NM	CIVIL ENGINEERING	360	09–Dec-98	18–Nov-99
KIRTLAND	NM	EDUCATION SERVICES	12	26–Oct-98	15–Nov-99
KIRTLAND	NM	GENERAL LIBRARY	4	12–Jan-99	15–Dec-99
KIRTLAND	NM	RECREATIONAL SUPPORT	9	12–Jan-99	15–Dec-99
LANGLEY	VA	AIRCRAFT FLEET SERVICES	11	29–Jun-99	15–Dec-99
LANGLEY	VA	COMMUNICATION FUNCTIONS	8	23–Mar-99	01–Aug-00
LANGLEY	VA	GROUNDS MAINTENANCE	9	04–May-99	20–Aug-99
LANGLEY	VA	TRANSIENT AIRCRAFT MAINTENANCE	21	27–Aug-98	27–Aug-99
LOS ANGELES	CA	PACKING AND CRATING	4	01–Jul-97	12–Mar-99
MAXWELL	AL	EDUCATION SERVICES	35	31–Jul-98	01–Jul-99
MCGUIRE	NJ	FURNISHINGS MANAGEMENT	2	14–May-99	05–Feb-00
MINOT	ND	ADMINISTRATIVE SWITCHBOARD	6	07–Jan-99	01–Oct-99
MINOT	ND	GROUNDS MAINTENANCE	9	18–May-99	19–Dec-99
MT HOME	ID	GROUNDS MAINTENANCE	6	20–Jul-99	09–Jul-00
MT HOME	ID	TRANSIENT AIRCRAFT MAINTENANCE	7	27–Aug-98	29–Jul-99
MULTIPLE INSTLNS		LINEN	11	17–Jun-99	05–Dec-99
RAMSTEIN	GERMY				
SPANGDAHLEM	GERMY				
LAKENHEATH	UK				
MILDENHALL	UK				
MULTIPLE INSTLNS		RADAR	106	12–Nov-98	16–Apr-99
CANNON	NM				
SEYMOUR JOHNSON	NC				
SHAW	SC				
NELLIS	NV	COMMUNICATION FUNCTIONS	9	22–Dec-98	03–Nov-99
NELLIS	NV	TRANSIENT AIRCRAFT MAINTENANCE/AEROSPACE GROUND EQUIPMENT.	18	27–Aug-98	09–Aug-99
OFFUTT	NE	COMPUTER OPERATIONS	76	17–Feb-99	01–Mar-00
OFFUTT	NE	DATA AUTOMATION	67	27–Aug-98	01–Jul-99
PATRICK	FL	BASE WEATHER OBSERVING	5	17–Mar-98	01–Jun-99
PATRICK	FL	RANGE MAINTENANCE	32	19–May-98	01–Jun-99
PATRICK	FL	RANGE MAINTENANCE	31	19–May-98	01–Jun-99
POPE	NC	FURNISHINGS MANAGEMENT	1	07–Oct-98	17–Nov-99
PORTLAND	OR	ADMINISTRATIVE SWITCHBOARD	2	22–Dec-98	10–Oct-99
RANDOLPH	TX	COURSEWARE DEVELOPMENT	38	30–Sep-99	TBD
RANDOLPH	TX	FLYING TRAINING	26	01–Jun-98	21–May-99
RANDOLPH	TX	FLYING TRAINING	45	20–Jan-98	03–Aug-98
SCHRIEVER	CO	FOOD SERVICES	18	02–Sep-99	01–Nov-00
SCOTT	IL	FURNISHINGS MANAGEMENT	3	08–Jul-98	01–Jul-00
SCOTT	IL	MISCELLANEOUS ACTIVITIES	2	18–Mar-99	13–Jan-00
SEYMOUR JOHNSON	NC	TRANSIENT AIRCRAFT MAINTENANCE	8	12–Nov-97	29–Jul-99
SHAW	SC	COMMUNICATION FUNCTIONS	3	18–May-99	09–May-00
SHAW	SC	LIBRARY	7	27–Aug-98	25–Aug-99
SHAW	SC	TRANSIENT AIRCRAFT MAINTENANCE	11	28–Aug-98	16–Jul-99
TINKER	OK	GRAPHIC ARTS	13	14–Jan-99	14–Jul-99
TRAVIS	CA	FACILITIES SERVICES MAINTENANCE	2	20–Apr-98	01–Dec-99
TRAVIS	CA	HEATING SYSTEMS	5	20–Apr-98	15–Nov-99
VANDENBERG AFB	CA	MISSILE STORAGE & MAINTENANCE	66	14–Apr-99	18–Jan-00
WHITEMAN	MO	ADMINISTRATIVE SWITCHBOARD	9	22–Dec-98	03–Sep-99
WHITEMAN	MO	GROUNDS MAINTENANCE	5	08–Dec-98	01–Nov-99
WHITEMAN	MO	HOSPITAL SERVICES	2	17–Apr-98	17–Nov-98
WHITEMAN	MO	PROTECTIVE COATING	8	06–Apr-99	22–Nov-99

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–32215 Filed 12–10–99; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 12, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief 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.

Dated: December 7, 1999.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New Collection.

Title: Performance Report for the Jacob K. Javits Fellowship Program.

Frequency: Annually.

Affected Public:

Not-for-profit institutions; Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses: 115.

Burden Hours: 690.

Abstract: This information collection provides the U.S. Department of Education with information needed to determine if grantees have made substantial progress toward meeting the program's objectives and allow program staff to monitor and evaluate the program. The Congress has mandated (through the Government's Performance and Results Act of 1993) that the U.S. Department of Education provide documentation about the progress being made by the program.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or should be faxed to 202–708–9346.

Questions regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address joe__schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–32135 Filed 12–10–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Intent to Compromise Claim Against the Puerto Rico Department of Education

AGENCY: Department of Education.

ACTION: Notice of intent to compromise claim.

SUMMARY: The United States Department of Education (Department) intends to compromise a claim against the Commonwealth of Puerto Rico Department of Education (Puerto Rico) now pending before the Office of Administrative Law Judges (OALJ), Docket No. 97–170–R (20 U.S.C. 1234a(j)).

DATES: Interested persons may comment on the proposed action by submitting written data, views, or arguments on or before January 27, 2000.

ADDRESSES: Comments should be addressed to John R. Mason, Esq., Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6E112, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: John R. Mason, Esq., Telephone 401–8292. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8399.

SUPPLEMENTARY INFORMATION: The claim in question arose when the Department's Assistant Secretary for Vocational and Adult Education (Assistant Secretary) issued a program determination letter (PDL) on September 30, 1997. The PDL demanded a refund of $671,373 of funds provided Puerto Rico for Federal Fiscal Years 1990–1994 under the Adult Education Act, 20 U.S.C. 1201 et seq. (1990 and 1991). The refund related to Puerto Rico's alleged failure spend the amounts of funds that the Act required to be set aside for special populations and purposes. Puerto Rico filed a timely request for review of the PDL with the OALJ. The Administrative Law Judge assigned to the appeal then granted the parties' joint motion to stay proceedings pending settlement negotiations.

During settlement discussions, the parties stipulated that $53,736 in 1990 funds are barred by the appliable statue of limitations. Therefore, only $617,637 of the $671,373 in the PDL are still at issue. Puerto Rico also submitted substantial documentation purporting to show that it, in fact, spend enough to meet a portion of the set asides out of State funds. After conducting a thorough review of this documentation and re-examining the documentation upon which the PDL was based, the Assistant Secretary has decided to accept Puerto Rico's documentation as to $218,283 and reduce the claim to $399,354. The Department proposes to compromise the remaining $399,354 for 230,755.

Based on the amount that would be repaid by Puerto Rico under the proposed settlement agreement, the documentation Puerto Rico submitted during settlement discussions, and the litigation risks and costs of proceeding through the administrative and,

possibly, court process for this appeal, the Department has determined that it would not be practical or in the public interest to continue this proceeding. Rather, under the authority in 20 U.S.C. 1234a(j), the Department has determined that compromise of this claim for $230,755 is appropriate.

The public is invited to comment on the Department's intent to compromise this claim. Additional information may be obtained by calling or writing to John R. Mason, Esq. at the telephone number and address listed at the beginning of this notice.

Program Authority: 20 U.S.C. 1234a(j).

Dated: December 7, 1999.

Thomas Skelly,

Acting Chief Financial Officer.

[FR Doc. 99–32167 Filed 12–10–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RA00–1–000]

Amana Company, L.P.; Notice of Filing

December 7, 1999.

On December 3, 1999, the Amana Company, L.P. (Amana) filed a Petition For Review of Denial of Adjustment (Petition) pursuant to Section 504(b) of the Department of Energy Organization Act, 42 U.S.C. 7194(b), and Section 385.1004 of the Commission's Regulations (18 CFR 385.1004). Amana's Petition requests review of the November 3, 1999 Decision and Order issued in Case Number VEE–0054 by the Department of Energy's Office of Hearings and Appeals. Amana is concurrently requesting a hearing in accordance with Section 385.1006 of the Commission's Rules (18 CFR 385.1006).

An person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, 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 December 17, 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).

David P. Boergers,

Secretary.

[FR Doc. 99–32114 Filed 12–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–114–000]

Chandeleur Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

December 7, 1999.

Take notice that on December 1, 1999, Chandeleur Pipe Line Company Pipe Line (Chandeleur) tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1, Tenth Revised Sheet No. 5, with an effective date of January 1, 2000.

Chandeleur is proposing to change its Fuel and Line Loss Allowance from 0.7% to 0.2%, to become effective January 1, 2000.

Chandeleur states that copies of the filing were served upon the company's jurisdictional customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. 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. 99–32122 Filed 12–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT00–6–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 7, 1999.

Take notice that on December 1, 1999, El Paso Natural Gas Company (El Paso) tendered for filing an interruptible Transportation Service Agreement (TSA) between El Paso and MGI Supply, Ltd. (MGI) and Fifteenth Revised Sheet No. 1 to its FERC Gas Tariff Second Revised Volume No. 1–A.

El Paso states that it is submitting the TSA for Commission approval since the TSA contains provisions which differ from El Paso's Volume No. 1–A Tariff. The tariff sheet, which references the TSA, is proposed to become effective on January 1, 2000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations . All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. 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. 99–32118 Filed 12–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–130––000]

Granite State Gas Transmission, Inc., Notice of Tariff Filing

December 7, 1999.

Take notice that on December 1, 1999, Granite State Gas Transmission, Inc. (Granite State) tendered for filing as part

of its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheets listed below for effectiveness on January 1, 2000.

Twenty-Second Revised Sheet No. 21
Twenty-Third Revised Sheet No. 22
Second Revised Sheet No. 333
Second Revised Sheet No. 334
First Revised Sheet No. 335

Granite State states that the purpose of this filing is to reconcile and true-up the Deferred Account of its Power Cost Adjustment (PCA) and to delete all tariff language relating to the PCA, since the power usage reimbursement provision of the underlying lease with Portland Pipe Line Corporation has terminated.

According to Granite State, copies of the filing have been mailed to all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intevene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. 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. 99–32131 Filed 12–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP00–36–000, CP00–37–000, and CP00–38–000]

Guardian Pipeline, L.L.C.; Notice of Applications for Certificates

December 7, 1999.

Take notice that on November 30, 1999, Guardian Pipeline, L.L.C. (Guardian), Fairlane Plaza South, 330 Town Center Drive, Dearborn, Michigan 48126–2712, filed an application in Docket No. CP00–36–000 pursuant to Section 7(c) of the Natural Gas Act (NGA) seeking a certificate of public convenience and necessity to construct, install, own, operate, and maintain a new interstate natural gas pipeline and ancillary facilities. In Docket No. CP00–37–000, Guardian requests a blanket certificate pursuant to Subpart F of Part 157 of the Commission's regulations to perform certain routine activities and operations. In addition, in Docket No. CP00–38–000, Guardian seeks a blanket certificate pursuant to Subpart G of Part 284 of the Commission's regulations to provide open-access transportation of natural gas for others, all as more fully set forth in the applications which are one file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.us/online/rims.htm (call 202–208–2222 for assistance).

Guardian states that it is a limited liability company formed under the laws of the State of Delaware, with its principle place of business in Dearborn, Michigan. Guardian further states that it is jointly owned by CMS Gas Transmission and Storage Company, Viking Gas Transmission Company, and WICOR, Inc.

Guardian states that, in accordance with Order No. 609, within three days of filing its application, Guardian will provide notice to directly affected and adjacent landowners notifying them that Guardian filed its application. Guardian states that this notification will include the information required by the Commission in Order No. 609.

Guardian states that its proposed pipeline system will be comprised of approximately 140.3 miles of new 36-inch natural gas transmission pipeline extending from the Chicago Hub near Joliet, Illinois to a terminus near Ixonia, Wisconsin. Guardian states that it will also construct an 8.5-mile-long, 16-inch Eagle Lateral off its mainline at a point near Eagle, Wisconsin. At Ixonia, Guardian proposes to interconnect with nonjurisdictional facilities to be constructed, owned, and operated by Wisconsin Gas Company (Wisconsin Gas), a local distribution company exempt from the Commission's regulation under the Hinshaw amendment to the NGA. At Eagle, via its Eagle Lateral, Guardian proposes to interconnect with the existing non-jurisdictional Eagle pipeline, jointly owned by Wisconsin Gas and Wisconsin Electric Power Company.

Guardian states that it will provide up to 750,000 Dth/d of transportation service in a cost-effective, safe and environmentally responsible manner from the multiple gas supply sources and competitive upstream transportation, storage and related service providers at the Chicago Hub. Guardian estimates that the total cost of constructing the pipeline and appurtenant facilities will be approximately $224.3 million.

Guardian proposes an in-service date of November 1, 2002. To meet its targeted in-service date, Guardian requests that the Commission issue a Preliminary Determination on non-environmental issues on or before May 15, 2000, a Draft Environmental Impact Statement in September 2000, a Final Environmental Impact Statement in January 2001, and final certificate authorization on or before March 1, 2001.

Guardian contends that issuance of the requested certificates by March 1, 2001 is necessary to ensure that Guardian has adequate time to secure rights-of-way and to construct its pipeline to meet its November 1, 2002 in-service date and satisfy its agreements with its shippers. Guardian states that it has been advised by one of its shippers that the existing long-term contracts with the shipper's existing pipeline supplier begin expiring on their own terms on October 31, 2003. Guardian states that it has been further advised that such shipper must give notices of intent as to the roll-over of the contracts on or before October 31, 2001. According to Guardian, this shipper requires regulatory certainty that Guardian will be able to meet its in-service date before it is required to provide such contract notices to the existing pipeline supplier.

In addition to its mainline and Eagle Lateral, Guardian states that it will also construct and operate an Alliance Meter Station and Launcher Facility in Will County, Illinois; a 100-foot-long, 30-inch Northern Border Interconnect Pipeline and Meter Station in Will County, Illinois; a 550-foot-long, 24-inch Midwestern Gas Interconnect Pipeline and Meter Station in Will County, Illinois; a 200-foot-long, 16-inch Natural Gas Pipeline Company of America Interconnect Pipeline and Meter Station in Will County, Illinois; a 25,080 horsepower (hp) Joliet Compressor Station in Will County, Illinois; an Eagle Lateral Tap Valve and Launcher Facility at the beginning of the Eagle Lateral in Walworth County, Wisconsin; an Eagle Meter Station and Receiver Facility in Waukesha County, Wisconsin; a Northern Natural Meter Station in Walworth County, Wisconsin; and an Ixonia Meter Station and Receiver Facility in Jefferson County, Wisconsin.

According to Guardian, its application meets the requirements of the Commission's recently-issued

regulations regarding certificate applications promulgated in Order No. 603 as well as the standards set forth in the Commission's Statement of Policy issued in Docket No. PL99–3–000. Specifically, Guardian states that, as a new pipeline, its project passes the Commission's ''no subsidies'' test. Guardian further states that its project was developed to eliminate or minimize impacts on the potentially affected interests of existing customers, captive shippers of existing pipelines, and landowners and the environment. Guardian contends that the public benefits of its project are significant and outweigh any adverse impacts that may remain despite Guardian's minimization of those impacts. For all of these reasons, Guardian asserts that its project is in the public convenience and necessity.

Guardian states that it held an open season in which it made capacity on its system available to interested shippers on a nondiscriminatory basis. As a result Guardian states that it executed binding precedent agreements with four shippers for 702,500 Dth/d of firm transportation service. Guardian asserts that the executed precedent agreements demonstrate that there is market demand for natural gas transportation service on Guardian from the Chicago Hub to markets in northern Illinois and Wisconsin. Guardian further asserts that the market study included in Exhibit I to its application demonstrates that projected growth in gas demand in the Wisconsin and northern Illinois markets support its project.

Based on executed precedent agreements to date, Guardian proposes to provide firm transportation service for the following shippers:

Shippers	Volume (Dth/d)	Term (years)
Wisconsin Gas Company	650,000	10
Alliant Energy	10,000	10
WPS Energy Services, Inc.	2,500	10
Shipper A (confidential)	40,000	10

Guardian proposes to provide open access firm transportation service under Rate Schedule FT–1, and interruptible transportation service under Rate Schedule IT–1, under rates, terms, and conditions set forth in its pro forma tariff submitted with its application. Guardian proposes to offer both negotiated and recourse rates. Guardian explains its recourse rates are traditional cost-of-service based rates, designed under the straight-fixed variable method. Guardian contends that its negotiated rates are different from its recourse rates in that Guardian offered to all shippers in its open season the option to elect, instead of recourse rates, either (i) a 10-year or 15-year fixed rate, or (ii) an annual declining rate for a minimum term of 10 years up to a maximum term of 15 years. Guardian says that during its open season process it offered firm shippers the choice of negotiated or recourse rates and each shipper who executed a precedent agreement elected negotiated rates.

Guardian estimates the total capital cost of constructing the pipeline and appurtenant facilities will be approximately $224.3 million, excluding AFUDC. Of the total estimated capital construction cost, Guardian states that $196.3 million relates to pipeline and ancillary facilities, and $28.0 million relates to a compressor station. Guardian says that to date, its project has been financed by equity furnished by the project sponsors. Guardian states that, following issuance of the Commission's certificate order, it anticipates that the project will be financed during the remainder of the construction phase through debt capital, with the debt raised in the commercial bank market. Guardian's anticipated initial capital structure on the in-service date will be 70% debt and 30% equity, and with an 8.25% cost of debt and 14% return on equity. Guardian expects that the credit support for the debt will be the shipper contracts and the debt will be non-recourse to project sponsors during the initial term of the shipper contracts. Guardian states that it has not yet finalized precise financing plans.

Guardian further requests that the Commission grant any waivers of its regulations that the Commission may deem necessary to grant the relief requested herein.

Guardian states that, in accordance with Order No. 603, the name, address, and telephone number for a Guardian contact person is: Ms. Molly Mulroy, Guardian Pipeline, L.L.C., 835 Virginia Road, Unit B, Crystal Lake, Illinois 60014, 1–800–782–7182.

Any person desiring to be heard or to make protest with reference to said application should on or before December 28, 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 385.211 or 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party 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 Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must 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 intervener status.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on 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 Guardian to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–32115 Filed 12–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–113–000]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 7, 1999.

Take notice that on December 1, 1999, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets to be effective, January 1, 2000:

1st Revised Thirty Third Revised Sheet No. 5
1st Revised Thirty Third Revised Sheet No. 6
1st Revised Thirtieth Revised Sheet No. 7

MRT states that pursuant to the GRI provisions of the settlement in Docket No. RP98–235, and Commission Order in Docket No. RP99–323, MRT is filing to adjust its annual GRI transportation surcharge rates established in the GRI 2000 RD&D program.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. 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. Waston, Jr.,

Acting Secretary.

[FR Doc. 99–32119 Filed 12–10–99 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–124–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

December 7, 1999.

Take notice that on December 1, 1999, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, with a proposed effective date of January 1, 2000:

Twenty First Revised Sheet No. 9
Third Revised Sheet No. 43

National states that pursuant to Article III, Section 1, of the approved settlement at Docket Nos. RP94–367–000, et al., National is required to recalculate the maximum Firm Gathering (FG) rate annually to reflect: (a) The changes in the FG reservation determinants based on the FG throughput for the prior 12 months ended October 31; (b) an annual reduction of 2.5 percent in direct Operation and Maintenance Costs; (3) the costs resulting from operation of Sections 2 and 3 of Article III of the settlement; and (d) changes in the IG revenues to be subtracted from the Gathering Cost-of-Service based on the maximum IG rate in effect each month during the prior 12 months ended October 31 times the IG throughput for the same period. The recalculation produced an FG rate of $9.0785 per dth.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. 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. 99–32125 Filed 12–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–125–000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 7, 1999.

Take notice that on December 1, 1999, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Thirteenth Revised Sheet No. 8, with a proposed effective date of January 1, 2000.

National states that the proposed tariff sheets reflect an adjustment to recover through National's EFT rate the costs associated with the Transportation and Storage Cost Adjustment (TSCA) provision set forth in Section 23 of the General Terms and Conditions of National's FERC Gas Tariff.

National further states that copies of this compliance filing were served upon the Company's jurisdictional customers and the regulatory commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

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 Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the

Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. 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. 99–32126 Filed 12–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–126–000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 7, 1999.

Take notice that on December 1, 1999, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets to become effective January 1, 2000:

12th Revised Sheet No. 8
20th Revised Sheet No. 9
4th Revised Sheet No. 10
3rd Revised Sheet No. 11

National asserts that the purpose of this filing is to reflect the year 2000 Gas Research Institute (GRI) unit surcharges approved by the Commission on April 29, 1998, at Docket No. RP97–149–003, et al.

National states that the proposed tariff sheets reflect demand/reservation surcharges of 20.0 cents and 12.3 cents per Dth for ''high load factor and low load factor'' customers respectively, and a commodity/usage surcharge of .72 cents on firm service and one-part interruptible rates.

National further states that copies of this filing are being were served upon National's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not service 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. 99–32127 Filed 12–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Dockert No. GT00–7–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff and Filing of Non-Conforming Service Agreements

December 7, 1999.

Take notice that on December 3, 1999, Northwest Pipeline Corporation (Northwest) tendered for filing and acceptance one Rate Schedule TF–1 non-conforming service agreement and four Rate Schedule TF–2 non-conforming service agreements. Northwest also tendered Fourth Revised Sheet No. 364 and Third Revised Sheet No. 365 of its FERC Gas Tariff, third Revised Volume No. 1, to be effective January 3, 2000.

Northwest states that the Rate Schedule TF–1 service agreement contains a contract-specific operational flow order provision and the four Rate Schedule TF–2 service agreements contain scheduling priority provisions imposing subordinate primary corridor rights. The tariff sheets are submitted to add such agreements to the list of non-conforming service agreements contained in Northwest's tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. 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. 99–32117 Filed 12–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–117–000]

Panhandle Eastern Pipe Line Company; Notice of Tariff Filing

December 7, 1999.

Take notice that on December 1, 1999, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective January 1, 2000:

Fifty-Fourth Revised Sheet No. 4
Fifty-Fourth Revised Sheet No. 5
Fifty-Fourth Revised Sheet No. 6
Fifty-Sixth Revised Sheet No. 7
Fifty-Sixth Revised Sheet No. 8
Thirty-Third Revised Sheet No. 15

Panhandle states that the purpose of this filing is to revise the Gas Research Institute (GRI) surcharges to be effective January 1, 2000 in compliance with the January 21, 1998, Stipulation and Agreement Concerning GRI Funding approved by the Commission in Gas Research Institute, 83 FERC ¶ 61,093 (1998), order on reh'g, 83 FERC ¶ 61,331 (1998). Specifically, Panhandle's filing complies with the surcharges set forth in Appendix A to the Stipulation and Agreement as follows: (1) A reservation surcharge of 20.0 cents per dekatherm per month will be charged on non-discounted firm high load factor customers, *i.e.*, greater than 50% load factor; (2) a reservation surcharge of 12.3 cents per dekatherm per month will be charged on non-discounted firm low load factor customers, *i.e.*, less than or equal to 50% load factor; (3) a GRI volumetric surcharge of 0.72 cents per dekatherm surcharge will be charged on all non-discounted firm commodity and interruptible transportation services; and (4) a 1.6 cents per dekatherm surcharge will be charged on all non-discounted firm commodity units

delivered to customers qualifying for service under Panhandle's Rate Schedule SCT.

Panhandle states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the approrpriate 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. 99–32124 Filed 12–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–118–000]

Tennessee Gas Pipeline Company; Notice of Filing and Request for Waiver

December 7, 1999.

Take notice that on December 1, 1999, Tennessee Gas Pipeline Company (Tennessee) tendered for filing under Article XXV of the General Terms and Conditions of Tennessee's FERC Gas Tariff, Fifth Revised Volume No. 1 both (i) a revised accounting of Tennessee's take-or-pay transition costs and (ii) a request for waiver of the requirement to restate Tennessee's take-or-pay transition cost surcharges.

Tennessee's request for waiver is based on the fact that Tennessee has not incurred any new recoverable take-or-pay costs since the effectiveness of Tennessee's last take-or-pay filing under Article XXV in Docket No. RP99–325.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before December 13, 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. 99–32123 Filed 12–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–127–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 7, 1999.

Take notice that on December 1, 1999, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, Third Revised Volume No. 258. The effective date for the tariff sheet is January 1, 2000.

Transco states that the purpose of the instant filing is to revise Sections 7(c) and (d) of the General Terms and Conditions of Transco's Third Revised Volume No. 1 Tariff to provide that the interest rate to be applied to unpaid amounts due from Buyers and to overcharges by Transco shall be the interest rate provided under 18 CFR 154.501(d)(1), which is the same interest rate currently applied to refunds by Transco. This revision will conform Transco's tariff to a common business practice being adopted by Transco and its affiliated pipelines which is anticipated to be effective on Transco's system January 1, 2000. In addition, Transco's revision to such interest calculation is consistent with the interest calculation method reflected in the tariffs of numerous other pipelines.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. 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. 99–32128 Filed 12–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–129–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 7, 1999.

Take notice that on December 1, 1999, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets, which tariff sheets are enumerated in Appendix A attached to the filing. Such tariff sheets are proposed to be effective January 1, 2000.

Transco states that the purpose of the instant filing is to reflect the 2000 GRI surcharges approved by the Commission's Order issued on September 29, 1999, in Docket No. RP99–323–000. Also in accordance with GRI's 1993 settlement, Transco has calculated the firm transportation service load factors on the actual volumes transported during the 12 month period October 1998 through September 1999.

Transco states that copies of the filing are being mailed to affected customers 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 Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions

or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. 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. 99–32130 Filed 12–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR00–6–000]

Transok, LLC; Notice of Petition for Rate Approval

December 7, 1999.

Take notice that on December 3, 1999, Transok LLC (Transok) submitted for filing a fuel tracker to reflect the fuel use for Transok's combined Oklahoma Transmission System. Transok anticipates that it will combine its Traditional and Anadarko Systems into the Oklahoma Transmission System on February 1, 2000. The Commission has already approved the combination, pending necessary modifications to Transok's computer systems and current contracts.

Transok seeks an effective date of the later of February 1, 2000 or the date of implementation of the combined Oklahoma Transmission System. Transok has served a copy of the filing on all current shippers on its present Anadarko and Traditional Systems and on the Oklahoma Corporation Commission.

Any person desiring to participate in this proceeding should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All motions or protests should be filed on or before December 22, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–32121 Filed 12–10–99 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–128–000]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

December 7, 1999.

Take notice that on December 1, 1999, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet, with the proposed effective date of January 1, 2000.

Second Revised Sheet No. 6B

Williams states that this filing is being made pursuant to Article 13 of the General Terms and Conditions of its FERC Gas Tariff to reflect revised fuel and loss reimbursement percentages. The percentages are based on actual fuel and loss for the twelve months ended September 30, 1999.

Williams states that a copy of its filing was served on all jurisdictional customers 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 Section 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. 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. 99–32129 Filed 12–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1494–171 Oklahoma]

Grand River Dam Authority; Notice of Availability of Final Environmental Assessment

December 7, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47910), the Office of Hydropower Licensing has prepared a final environmental assessment (FEA) for Grand River Dam Authority's proposal to permit Dennis Blakemore, d/b/a Honey Creek Landing, to modify an existing commercial marina facility located on Grand Lake's Honey Creek adjacent to the Honey Creek Bridge (US Highway 59). The proposed modifications include, but are not limited to, the relocation of a fuel dock from its approved location, about 845 feet from the northern shoreline to a new (present) location, about 130 feet from the northern shoreline. Further, the permittee proposed to replace four existing boat slips with a building containing a business office, bathhouse, and laundromat. The Pensacola Project is on the Grand River, in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma.

The FEA is attached to a Commission order issued on November 15, 1999 for the above application. Copies of the FEA can be obtained by calling the Commission's Public Reference Room at (202) 208–1371. It may also be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance). In the FEA, staff concludes that approval of the licensee's proposal, as well as various alternative actions, would not constitute a major Federal action significantly affecting the quality of the human environment. For further information, please contact the project manager, Jon Cofrancesco at (202) 219–0079.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23120 Filed 12–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

December 7, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11827–000.

c. *Date filed:* November 2, 1999.

d. *Applicant:* United Power Corporation.

e. *Name of Project:* Bryant Mountain Pumped Storage Project.

f. *Location:* On USBR ''D'' Canal, Klamath County, Oregon. The project would be built on U.S. Bureau of Reclamation lands. T41S, R12E (Sections 1, 2, 11, 12, and 14), T40S, R12E (Sections 22, 23, 26, 27, 35, and 36), T40S, R13E (Sections 19, 20, 29, 30, 31, and 32), T41S, R13E (Sections 5 and 6).

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Bart M. O'Keeffe, United Power Corporation, P.O. Box 245, Byron, CA 94514, (925) 634–1550.

i. *FERC Contact:* Robert Bell, robert.bell@ferc.fed.us, 202–219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *The proposed pumped storage project would consist of:* (1) A 2,600-foot-long, 250-foot-high earth upper dam: (2) an upper reservoir having a surface area of 475 acres and a storage capacity of 30,400 acre-feet with a water surface elevation of 5,400 feet msl; (3) a 12,800-foot-long, 100-foot-high earth lower dam; (4) a lower reservoir having a surface area of 610 acres and a storage capacity of 34,400 acre-feet with a water surface elevation of 5,220 feet msl; (5) a 1,500-foot-long, 30-foot diameter concrete low pressure tunnel; (6) a 270-foot-deep, 30-foot-diameter concrete surge shaft; (7) a 1,100-foot-long, 30-foot diameter concrete high pressure tunnel; (8) a 3,800-foot-long, 24-foot-diameter concrete power shaft; (9) a powerhouse containing five generating units with a total installed capacity of 1,075 MW; (10) a 4-mile-long, 500 KV transmission line; and (11) other appurtenances.

The project would have an annual generation of 4,708,500 MWh and project power would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www/ferc/fed.us/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the

Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–32116 Filed 12–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

December 8, 1999.

The following notice of meeting is published pursuant to Section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: December 15, 1999, 10:00 a.m.

PLACE: Room 2C, 888 First Street, NE, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*** Note:** Items Listed on the Agenda May Be Deleted Without Further Notice.

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Secretary, Telephone (202) 208–0400. For a Recording Listing Items Stricken From or Added to the Meeting, Call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; However, all public documents may be examined in the reference and information center.

CONSENT AGENDA—HYDRO, 731ST—MEETING DECEMBER 15, 1999, REGULAR MEETING (10:00 A.M.)

CAH–1.
DOCKET # P–460, 024, CITY OF TACOMA, WASHINGTON
CAH–2.
DOCKET # P–460, 023, CITY OF TACOMA, WASHINGTON
CAH–3.
DOCKET # P–2395, 010, FRASER PAPERS INC. AND FLAMBEAU HYDRO, L.L.C.
OTHER #S P–2421, 010, FRASER PAPERS INC. AND FLAMBEAU HYDRO, L.L.C.
P–2473, 009, FRASER PAPERS INC. AND FLAMBEAU HYDRO, L.L.C.
P–2640, 017, FRASER PAPERS INC. AND FLAMBEAU HYDRO, L.L.C.
CAH–4.
OMITTED
CAH–5.
DOCKET # P–11157, 003, RUGRAW, INC.

CONSENT AGENDA—ELECTRIC

CAE–1.
DOCKET # ER00–320, 000, WAYNE-WHITE COUNTIES ELECTRIC COOPERATIVE
CAE–2.
DOCKET # ER00–443, 000, ARCO CQC KILN, INC.
OTHER #S ER00–446, 000, OGDEN MARTIN SYSTEMS OF UNION, INC.
ER00–494, 000, TRANSALTA CENTRALIA GENERATION LLC
ER00–101, 000, ALLEGHENY ENERGY UNIT 1 AND UNIT 2, LLC
ER00–571, 000, JONES BLACK RIVER SERVICES, INC.
EL00–17, 000, JONES BLACK RIVER SERVICES, INC.
CAE–3.
DOCKET # ER00–459, 000, DETROIT EDISON COMPANY
CAE–4.
OMITTED
CAE–5.
DOCKET # ER00–332, 000, CALIFORNIA POWER EXCHANGE CORPORATION
CAE–6.
DOCKET # ER00–298, 000, PJM INTERCONNECTION, L.L.C.
CAE–7.
DOCKET # ER99–4392, 000, SOUTHWEST POWER POOL, INC.
CAE–8.
DOCKET # ER00–157, 000, NORTH AMERICAN ELECTRIC RELIABILITY COUNCIL
CAE–9.
DOCKET # ER00–188, 000, PSI ENERGY, INC.
OTHER #S EL00–22, 000, CINCINNATI GAS & ELECTRIC COMPANY
ER00–213, 000, CINCINNATI GAS & ELECTRIC COMPANY
CAE–10.
OMITTED
CAE–11.
OMITTED
CAE–12.
DOCKET # ER00–182, 000, COMMONWEALTH EDISON COMPANY
OTHER #S ER00–194, 000, PECO ENERGY COMPANY
CAE–13.
DOCKET # ER99–4531, 000, NEW ENGLAND POWER POOL
CAE–14.
DOCKET # ER99–4535, 000, VERMONT ELECTRIC POWER COMPANY
CAE–15.
DOCKET # ER00–147, 000, NEW ENGLAND POWER COMPANY
CAE–16.
DOCKET # ER99–2229, 002, CALIFORNIA POWER EXCHANGE CORPORATION
CAE–17.
DOCKET # OA97–237, 010, ISO NEW ENGLAND INC.
CAE–18.
DOCKET # OA97–25, 000, NORTHERN STATES POWER COMPANY (MINNESOTA) AND NORTHERN STATES POWER COMPANY (WISCONSIN)
OTHER #S OA97–25, 001, NORTHERN STATES POWER COMPANY (MINNESOTA) AND NORTHERN STATES POWER COMPANY (WISCONSIN)
OA97–606, 000, NORTHERN STATES POWER COMPANY (MINNESOTA) AND NORTHERN STATES POWER COMPANY (WISCONSIN)
OA97–606, 001, NORTHERN STATES POWER COMPANY (MINNESOTA) AND NORTHERN STATES POWER COMPANY (WISCONSIN)
ER98–1890, 000, NORTHERN STATES POWER COMPANY (MINNESOTA) AND NORTHERN STATES POWER COMPANY (WISCONSIN)
ER98–1890, 001, NORTHERN STATES POWER COMPANY (MINNESOTA) AND NORTHERN STATES POWER COMPANY (WISCONSIN)
ER98–2060, 000, NORTHERN STATES POWER COMPANY (MINNESOTA) AND NORTHERN STATES POWER COMPANY (WISCONSIN)
ER98–2060, 001, NORTHERN STATES POWER COMPANY (MINNESOTA) AND NORTHERN STATES POWER COMPANY (WISCONSIN)
EL98–40, 000, NORTHERN STATES POWER COMPANY (MINNESOTA) AND NORTHERN STATES POWER COMPANY (WISCONSIN)
EL98–40, 001, NORTHERN STATES POWER COMPANY (MINNESOTA) AND NORTHERN STATES POWER COMPANY (WISCONSIN)
CAE–19.
DOCKET # ER98–3554, 000, ISO NEW ENGLAND INC.
OTHER #S ER98–3554, 001, ISO NEW ENGLAND INC.
ER98–3554, 002, ISO NEW ENGLAND INC.
CAE–20.
DOCKET# ER99–694,000, SOUTHERN ENERGY CANAL, L.L.C.
OTHER#S ER99–694,001, SOUTHERN ENERGY CANAL, L.L.C.
ER99–694,002, SOUTHERN ENERGY CANAL, L.L.C.
ER99–1024,001, SOUTHERN ENERGY CANAL, L.L.C.
CAE–21.
DOCKET# ER98–2862,000, PUBLIC SERVICE COMPANY OF NEW MEXICO
OTHER#S ER98–3376,000, PUBLIC SERVICE COMPANY OF NEW MEXICO
CAE–22.
OMITTED
CAE–23.
DOCKET# ER99–3887,000, MIDAMERICAN ENERGY COMPANY
OTHER#S EL99–92,000, MIDAMERICAN ENERGY COMPANY
ER99–4226,000, AMEREN OPERATING COMPANIES
ER99–4415,000, ILLINOIS POWER COMPANY
ER99–4470,000, COMMONWEALTH EDISON COMPANY AND COMMONWEALTH EDISON COMPANY OF INDIANA
EL00–7,000, ILLINOIS POWER COMPANY
EL00–16,000, AMEREN OPERATING COMPANIES
ER99–4530,000, ILLINOIS POWER COMPANY

EL00–21,000, COMMONWEALTH EDISON COMPANY AND COMMONWEALTH EDISON COMPANY OF INDIANA
CAE–24.
DOCKET# EC99–106,000, SOUTHERN INDIANA GAS AND ELECTRIC COMPANY, INDIANA ENERGY, INC. AND VECTREN CORPORATION
CAE–25.
DOCKET# RM00–3,000, UPDATES TO INSTRUCTIONS FOR FERC FORM NO. 1 FILINGS
CAE–26.
DOCKET# RM00–2,000, TIME FRAME FOR INTERVENING IN AND PROTESTING FEDERAL POWER ACT SECTION 205 FILINGS
CAE–27.
OMITTED
CAE–28.
DOCKET# EL99–75,000, CALIFORNIA ELECTRICITY OVERSIGHT BOARD
CAE–29.
DOCKET# EL00–18,000, NEW ENGLAND POWER COMPANY AND MONTAUP ELECTRIC COMPANY
CAE–30.
OMITTED
CAE–31.
DOCKET# EL00–2,000, NORTHEAST TEXAS ELECTRIC COOPERATIVE, INC. AND UPSHUR-RURAL ELECTRIC COOPERATIVE, CORPORATION v. CENTRAL AND SOUTH WEST SERVICES, INC., CENTRAL POWER AND LIGHT COMPANY, WEST TEXAS UTILITIES COMPANY, PUBLIC SERVICE COMPANY OF OKLAHOMA AND SOUTHWESTERN ELECTRIC POWER COMPANY
CAE–32.
OMITTED
CAE–33.
DOCKET# ER00–317,000, CSW OPERATING COMPANIES

CONSENT MISCELLANEOUS AGENDA

CAM–1.
DOCKET# RM99–8,000, PRESERVATION OF RECORDS OF PUBLIC UTILITIES AND LICENSEES, NATURAL GAS COMPANIES, AND OIL PIPELINE COMPANIES
CAM–2.
DOCKET# RM00–4,000, DELEGATIONS OF AUTHORITY

CONSENT AGENDA—GAS AND OIL

CAG–1.
DOCKET# RP00–70,000, ALGONQUIN GAS TRANSMISSION COMPANY
CAG–2.
DOCKET# RP98–203,000, NORTHERN NATURAL GAS COMPANY
CAG–3.
DOCKET# RP00–74,000, CNG TRANSMISSION CORPORATION
CAG–4.
OMITTED
CAG–5.
DOCKET# RP00–76,000, WYOMING INTERSTATE COMPANY, LTD.
CAG–6.
OMITTED
CAG–7.
DOCKET# RP00–15,000, CNG TRANSMISSION CORPORATION
CAG–8.
DOCKET# RP99–470,000, BLACK MARLIN PIPELINE COMPANY
CAG–9.
DOCKET# RP99–501,001, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
OTHER#S RP99–501,000, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–10.
DOCKET# RP96–129,000, TRUNKLINE GAS COMPANY
CAG–11.
DOCKET# RP98–203,009, NORTHERN NATURAL GAS COMPANY
CAG–12.
DOCKET# RP00–18,002, INDICATED SHIPPERS V. NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–13.
DOCKET# RP98–404,007, MISSISSIPPI RIVER TRANSMISSION CORPORATION
CAG–14.
DOCKET# RP00–8,001, RELIANT ENERGY GAS TRANSMISSION COMPANY
CAG–15.
DOCKET# RP97–375,009, WYOMING INTERSTATE COMPANY, LTD.
CAG–16.
DOCKET# CP93–736,009, COLUMBIA GAS TRANSMISSION CORPORATION AND COLUMBIA GULF TRANSMISSION COMPANY
CAG–17.
DOCKET# RP99–227,003, HIGH ISLAND OFFSHORE SYSTEM, L.L.C.
CAG–18.
DOCKET# OR89–2,014, TRANS ALASKAN PIPELINE SYSTEM
OTHER#S IS89–7,010 AMERADA HESS PIPELINE CORPORATION
IS89–8,010, ARCO TRANSPORTATION ALASKA, INC.
IS89–9,010, BP PIPELINE (ALASKA), INC.
IS89–10,010, EXXON PIPELINE COMPANY
IS89–11,010, MOBIL ALASKA PIPELINE COMPANY
IS89–12,010, PHILLIPS ALASKA PIPELINE CORPORATION
IS89–13,010, UNOCAL PIPELINE COMPANY
CAG–19.
DOCKET# MG99–27,000, PANHANDLE EASTERN PIPE LINE COMPANY
OTHER#S MG99–28,000, SOUTHWEST GAS STORAGE COMPANY
MG99–29,000, TRUNKLINE GAS COMPANY
MG99–30,000, TRUNKLINE LNG COMPANY
CAG–20.
OMITTED
CAG–21.
DOCKET# CP99–538,000, B-R PIPELINE COMPANY AND PORTLAND GENERAL ELECTRIC COMPANY
CAG–22.
DOCKET# CP99–56,001, LBU JOINT VENTURE
CAG–23.
DOCKET# CP99–569,000, TEXAS EASTERN TRANSMISSION CORPORATION AND NATIONAL FUEL GAS SUPPLY CORPORATION
OTHER#S CP99–569,001, TEXAS EASTERN TRANSMISSION CORPORATION AND NATIONAL FUEL GAS SUPPLY CORPORATION
CAG–24.
DOCKET# CP99–320,000, SUMAS ENERGY 2, INC.
CAG–25.
DOCKET# CP99–579,000, SOUTHERN LNG INC.
OTHER#S CP99–580,000, SOUTHERN LNG INC.
CP99–581,000, SOUTHERN LNG INC.
CP99–582,000, SOUTHERN LNG INC.
CAG–26.
DOCKET# CP98–234,000, NORTHERN NATURAL GAS COMPANY
CAG–27.
DOCKET# CP98–159,003, PHELPS DODGE CORPORATION V. EL PASO NATURAL GAS COMPANY
OTHER#S CP98–159,004, PHELPS DODGE CORPORATION V. EL PASO NATURAL GAS COMPANY
CP99–573,000, EL PASO NATURAL GAS COMPANY
CP99–573,001, EL PASO NATURAL GAS COMPANY
CAG–28.
OMITTED
CAG–29.
DOCKET# CP99–175,001, MISSISSIPPI CANYON GAS PIPELINE, LLC

HYDRO AGENDA

H–1.
RESERVED

ELECTRIC AGENDA

E–1.
DOCKET# RM99–2,000, REGIONAL TRANSMISSION ORGANIZATION
ORDER ON FINAL RULE
E–2.
DOCKET# ER99–3144,000, AMERICAN ELECTRIC POWER SERVICE CORPORATION ON BEHALF OF: APPALACHIAN POWER COMPANY, COLUMBUS SOUTHERN POWER COMPANY, INDIANA MICHIGAN POWER COMPANY, KENTUCKY POWER COMPANY, KINGSPORT POWER COMPANY, OHIO POWER COMPANY AND WHEELING POWER COMPANY, CONSUMERS ENERGY COMPANY, DETROIT EDISON COMPANY, FIRST ENERGY CORPORATION ON BEHALF OF: THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, OHIO EDISON COMPANY, PENNSYLVANIA POWER COMPANY AND THE TOLEDO EDISON COMPANY, VIRGINIA ELECTRIC AND POWER COMPANY
OTHER#S EC99–80,000, AMERICAN ELECTRIC POWER SERVICE CORPORATION ON BEHALF OF: APPALACHIAN POWER COMPANY, COLUMBUS SOUTHERN POWER COMPANY, INDIANA MICHIGAN POWER COMPANY, KENTUCKY POWER COMPANY, KINGSPORT POWER COMPANY, OHIO POWER COMPANY AND WHEELING POWER

COMPANY, CONSUMERS ENERGY COMPANY, DETROIT EDISON COMPANY, FIRST ENERGY CORPORATION ON BEHALF OF: THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, OHIO EDISON COMPANY, PENNSYLVANIA POWER COMPANY AND THE TOLEDO EDISON COMPANY, VIRGINIA ELECTRIC AND POWER COMPANY
ORDER ON PROPOSED DISPOSITION OF FACILITIES AND RELATED RATE FILINGS

OIL AND GAS AGENDA

I.
PIPELINE RATE MATTERS
PR–1.
RESERVED
II.
PIPELINE CERTIFICATE MATTERS
PC–1.
DOCKET# CP97–315,000, INDEPENDENCE PIPELINE COMPANY
OTHER#S CP97–315,001, INDEPENDENCE PIPELINE COMPANY
CP97–319,000, ANR PIPELINE COMPANY
CP97–320,000, INDEPENDENCE PIPELINE COMPANY
CP97–321,000, INDEPENDENCE PIPELINE COMPANY
CP98–200,000, NATIONAL FUEL GAS SUPPLY CORPORATION
CP98–540,000, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
ORDER ON PROPOSAL FOR CERTIFICATION OF PIPELINE FACILITIES

David P. Boergers,

Secretary.

[FR Doc. 99–32312 Filed 12–9–99; 12:03 pm]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6507–2]

Agency Information Collection Activities: Proposed Collection; Comment Request; Information Collection Activities Associated With EPA's SF_6 Emissions Reduction Partnership for Electric Power Systems

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Information Collection Activities Associated with EPA's SF_6 Emissions Reduction Partnership for Electric Power Systems, EPA ICR No. 1933.01

Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before February 11, 2000.

ADDRESSES: Commenters must send an original and two copies of their comments referencing EPA ICR No. 1933.01: Information Collection Activities Associated with EPA's SF_6 Emissions Reduction Partnership for Electric Power Systems to: Air and Radiation Docket and Information Center, Climate Protection Division (6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Attention: Docket No. A–99–43.

Comments may also be submitted electronically through the internet to: a-and-r-docket@epa.gov. Comments in electronic format should also be identified by EPA ICR No. 1933.01: Information Collection Activities Associated with EPA's SF_6 Emissions Reduction Partnership for Electric Power Systems. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Public comments and supporting materials are available for viewing in the Air and Radiation Docket and Information Center, located at the address above. The Docket is open to the public on all federal government work days from 8:00 a.m. to 5:30 p.m. It is recommended that the public make an appointment to review docket materials by calling (202) 260–7549. The Docket will accept phone and fax requests for material. Phone requests may be made using the phone number listed above, and fax requests may be submitted to (202) 260–4400. A reasonable fee is charged for the duplication of materials.

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing.

EPA responses to comments, whether the comments are written or electronic, will be in a document in the **Federal Register**. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

FOR FURTHER INFORMATION CONTACT: For more information on specific aspects of this collection of information, contact Eric Dolin, Climate Protection Division (Mail Code 620J), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, (202) 564–9044, or dolin.eric@epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are power generation and transmission utilities.

Title: Information Collection Activities Associated with EPA's SF_6 Emissions Reduction Partnership for Electric Power Systems, EPA ICR No. 1933.01. OMB Control No. and expiration date are not applicable as this is a new ICR.

Abstract: The Environmental Protection Agency (EPA) is launching a new voluntary partnership, the SF_6 Emissions Reduction Partnership for Electric Power Systems, that aims to combine the efforts of EPA and industry to pursue technically and economically feasible actions to minimize SF_6 emissions and reduce the threat of global climate change. Participants in the program will have the flexibility of choosing cost-effective pollution preventions strategies that work for them. In turn, EPA will provide partners with technical information and sponsor research on strategies for reducing SF_6 emissions. EPA also will publicly recognize partners for their achievements in reducing emissions and protecting the environment through brochures, public service announcements, and articles for publication.

This ICR covers recordkeeping and reporting activities for participation in the SF_6 Emissions Reduction Partnership for Electric Power Systems. Partners must provide or keep records of information associated with six discrete information collections. Specifically, these information collections include the Memorandum of Understanding, Partner Representation Form, Emissions Baseline Year Letter, SF_6 Emissions Inventory Reporting Form, Policy and Procedures Document, and Emissions Reduction Goal Letter.

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.

EPA would like to solicit comments to:

i. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

ii. Evaluate the accuracy of the Agency's estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;

iii. Enhance the quality, utility, and clarity of the information to be collected; and

iv. Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

Burden Statement: Over the three years covered by this ICR, EPA estimates that a total of 175 Partners will join the SF_6 Partnership (100 in the first year, 50 in the second, and 25 in the third). Annualized over these three years, EPA estimates that an average of approximately 58 Partners (175/3 = 58) will join the SF_6 Partnership and submit an MOU and a Partner Representation Form each year. EPA expects 10 percent, or approximately 6, of these Partners will change representatives each year.

EPA estimates that 90 percent, or approximately 52, of the 58 Partners joining the SF_6 Partnership each year will select their own baseline year. As such, EPA expects to receive 52 Emissions Baseline Year Letters each year.

EPA expects to receive annual SF_6 Emissions Inventory Reporting Forms for all SF_6 emissions in a calendar year during the first quarter of the following year. As such, EPA expects to receive 0 forms in the first year, 100 forms in the second, and 150 in the third, or a total of 250 forms over the three years covered by this ICR. Annualized over these three years, EPA expects to receive an average of approximately 83 SF_6 Emissions Inventory Reporting Forms (250/3 = 83) each year. Further, EPA expects that Partners will maintain records of these 83 Inventory Reporting Forms and any supporting documentation each year.

EPA also estimates that all 58 Partners joining the SF_6 Partnership each year will develop a Policy and Procedures Document for the Proper Handling of SF_6 within that same year. However, these Partners will submit the Policy and Procedures Document with the first SF_6 Emissions Inventory Reporting Form in the first quarter of following year. As such, EPA expects to receive 0 documents in the first year, 100 in the second, and 50 in the third, or a total of 150 over the three years covered by this ICR. Annualized over these three years, EPA expects to receive an average of 50 Policy and Procedures Documents (150/3 = 50) each year. Further, EPA expects approximately 10 percent, or 5, of these 50 Partners will change their policy or procedures and subsequently update and submit a revised Policy and Procedures Document each year. As such, EPA expects to receive 5 revised documents each year.

In addition, EPA assumes that all Partners joining in the SF_6 Partnership in the first and second years and 50 percent of those joining in the third year will develop and submit Emissions Reduction Goal Letters. As such, EPA expects to receive 100 letters in the first year, 50 in the second, and 12 in the third, or a total of 162 over the three years covered by this ICR. Annualized over these three years, EPA expects to receive an average of 54 Emissions Reduction Goal Letters (162/3 = 54) each year. EPA also expects that approximately 10 percent, or approximately 5, of these Partners will change their emissions reduction goal and subsequently submit an updated Emissions Reduction Goal Letter each year. As such, EPA expects to receive 5 updated letters each year.

EPA estimates the annual total respondent burden and costs for the information collection activities associated with the SF_6 Partnership are approximately 6,966 hours per year with an annual cost of approximately $381,692.

EPA estimates that all Partners joining the SF_6 Partnership over the next three years will, on average, experience annual reporting burden of approximately 124 hours. This burden includes all of the time spent on reporting activities associated with the MOU, Partner Representation Form, Emissions Baseline Year Letter, SF_6 Emissions Inventory Reporting Form, and Emissions Reduction Goal Letter. This burden includes time for gathering data; filling out the MOU or forms; developing letters or documents; revising them, as appropriate; and submitting both original and updated versions to EPA.

EPA estimates that all Partners joining the SF_6 Partnership over the next three years will, on average, experience annual recordkeeping burden of approximately 0.3 hours. This burden covers time spent on keeping records associated with SF_6 Emissions Inventory Reporting Forms.

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.

Dated: November 24, 1999.

Eric Dolin,

Climate Protection Division.

[FR Doc. 99–32178 Filed 12–10–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6507–4]

Agency Information Collection Activities: Proposed Collection; Comment Request; Health Effects of Particulate Matter and Co-Pollutant Exposures Near the El Paso/Juarez Border Crossings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Health Effects of Particulate Matter and Co-pollutant Exposures near the El Paso/Juarez Border Crossings; EPA ICR Number: 1940.01. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before February 11, 2000.

ADDRESSES: Human Studies Division, Health Effects Research Laboratory, Environmental Protection Agency, MD–58, Research Triangle Park, NC 27711. Interested persons may obtain a copy of the ICR without charge by contacting: Dr. Melissa Gonzales, US EPA (MD 58–A), Research Triangle Park, NC, 27711.

FOR FURTHER INFORMATION CONTACT: Public comments and inquiries should be submitted to: Dr. Melissa Gonzales, (919) 966–7549, FAX: (919) 966–7584, E-mail: gonzales.melissa@epamail.epa.gov; or by mailing a request to the address above.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are school officials, parents and children in the El Paso Independent School District.

Title: Health Effects of Particulate Matter and Co-pollutant Exposures near the El Paso/Juarez Border Crossings (EPA ICR Number: 1940.01).

Abstract: 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. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

The proposed study will be conducted by the Epidemiology and Biomarkers Branch, Human Studies Division, National Health and Environmental Effects Research Laboratory, Office of Research and Development, US EPA. The purpose of this study is to examine the respiratory health effects in school-age children of mobile source air pollutants. Further knowledge regarding the respiratory health effects of airborne particulate matter is required to reduce scientific uncertainties in the development of an Air Quality Criteria for Particulate Matter under the Clean Air Act (42 U.S.C. 7403(d)). The National Academy of Science's Committee on Research Priorities for Airborne Particulate Matter has identified several issues of scientific uncertainty in health effects of airborne particulate matter exposures, including the role of particle size and the role of particulate matter constituents and co-pollutants. In this study of motor vehicle-related air pollution and children's health, the respiratory health effects of ultrafine particles (less than 0.3 microns in diameter), fine particulate matter ($PM_{2.5}$; less than 2.5 microns in diameter), and gaseous co-pollutants such as nitrogen dioxide and volatile organic compounds will be examined.

The El Paso, Texas metropolitan area was selected because of a combination of environmental features. Heavily traveled interstate freeways run through the central part of the city and over 18 million vehicles annually cross three international ports of entry between the two cities. During the winter months, low-level temperature inversions routinely trap motor vehicle emissions close to ground level. These conditions lead to routine violations of National Ambient Air Quality Standards during the winter months. This combination of heavy traffic volume and wintertime meteorological conditions in a large metropolitan area provides an opportunity to investigate the health effects of mobile source pollutants in children.

The parents of all children enrolled in the fourth and fifth grades of the El Paso Independent School District will receive an eight-page respiratory health questionnaire in both English and Spanish along with a written request for permission for their children to participate in a pulmonary function examination at their school. Participation in the study is entirely voluntary. The respiratory health questionnaire conforms to the ATS/DLD standard respiratory symptom questionnaire and consists of questions specific to the child such as general demographic information, childhood respiratory illness and history of asthma, and current respiratory health conditions. There also are questions regarding household characteristics and family history of smoking, asthma, and respiratory illnesses. Each parent will be asked to complete the questionnaire, seal the completed form in the provided envelope, and send the envelope back to the teacher with the child.

Ambient air pollutants will be measured at twenty-two elementary schools in the El Paso metropolitan area. These twenty-two schools were selected to represent areas close to and far away from central El Paso and the international border crossings as well as those areas in between. Once explicit permission has been received from both the parent and the child, the children from the selected schools will attempt to perform a routine pulmonary function examination consisting of blowing three to eight times into a tube connected to a spirometer. The pulmonary function breathing test is no more stressful than blowing out the candles on a birthday cake. During the pulmonary function examination, a field technician will record each child's height and weight, and coach the child to perform the breathing test. A new, sterile, disposable mouthpiece will be used for each child. The pulmonary function examination will be conducted according to guidelines developed by the American Thoracic Society and will be conducted in the child's elementary school during normal school hours with an school nurse on site during the examinations.

The information collected in this study will be used by scientists within EPA's Office of Research and Development. The data will be used to:

(i) Provide a better understanding of the association between exposures to ultrafine particulate matter and co-pollutants and pulmonary illness in children;

(ii) Assess the classification of children's exposure using data from the epidemiological study questionnaire, direct air pollutant measurements and exposure models for refining exposure classification methods for air pollution health studies;

(iii) Identify key exposure factors for school age children to particulate matter and co-pollutants;

(iv) Assess the prevalence of pulmonary illness, including reduced pulmonary function, in school children living in a metropolitan area along the US-Mexico border.

The information will appear in the form of EPA reports, journal articles, and will also be made publicly available. 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 EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement

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.

Type of respondent	Respondent activities	Estimated number of respondents	Burden hours	Frequency	Total burden hours	Total burden cost
Adult	Complete Questionnaire	9,100	0.40	1	3,640	[a] $53,581
Child	Pulmonary Function Exam	4,300	0.35	1	1,505	[b] 7,751
Total		13,400			5,145	61,332

[a] $14.72/hour.
[b] $5.15/hour (minimum wage).

There are no direct respondent costs for this data collection. There is no annual recordkeeping burden for this ICR.

Dated: December 1, 1999.

Hillel S. Koren,

Director, Human Studies Division, National Health and Environmental Effects Research Laboratory, Office of Research and Development.

[FR Doc. 99–32179 Filed 12–10–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6507–3]

Summary of the U.S. EPA Workshop on the Relationship Between Exposure Duration and Toxicity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of a final report.

SUMMARY: The notice announces the availability of a final report, Summary of the U.S. EPA Workshop on the Relationship Between Exposure Duration and Toxicity (EPA/600/R–99/081, September 1999). This report was prepared by Eastern Research Group, Inc. (ERG), for the U.S. Environmental Protection Agency's (EPA) National Center for Environmental Assessment (NCEA), within the Office of Research and Development (ORD). Current risk assessment procedures are typically based on overall daily exposure levels and tend to emphasize effects resulting from continuous exposure over a lifetime. Scientists now realize that exposures are more likely to be experienced as bursts or spikes, or intermittent exposures of varying levels. EPA's Risk Assessment forum is beginning to examine how dose-duration relationships are or can be incorporated into the risk assessment process for less-than-lifetime exposures. As part of this effort, the Forum and the Harvard School of Public Health, held a workshop on August 5–6, 1998, to discuss the current understanding of dose-duration relationships, the approaches that can be used in their modeling, the inclusion of these relationships in risk assessment, and future directions in this area. The workshop provided a forum for open discussion and identifying areas of consensus, as well as areas of difference.

ADDRESSES: A limited number of paper copies will be available from the EPA's National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242; telephone: 1–800–490–9198 or 513–489–8190; facsimile: 513–489–8695 on or about December 17, 1999. Please provide your name and mailing address and the title and EPA number of the requested publication. The document is not available in electronic form.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Kimmel, National Center for Environmental Assessment-Washington Office (8623D), U.S. Environmental Protection Agency, Washington, DC 20460; telephone: 202–564–3308; facsimile: 202–565–0078; *email:kimmel.gary@epa.gov*.

Dated: December 3, 1999.

William H. Farland,

Director, National Center for Environmental Assessment.

[FR Doc. 99–32181 Filed 12–10–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51938; FRL–6395–7]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSC, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from October 25, 1999 to November 5, 1999, consists of the PMNs, pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51938 and the specific PMN number in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Joe Carra, Deputy Director, Office of Pollution Prevention and Toxics (7401), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone numbers: (202) 554–1404 and TDD: (202) 554–0551; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain 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–51938. The official record consists of the documents specifically referenced in this action, any public comments 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 Mall 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.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51938 and the specific PMN number in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically*. You may submit your comments electronically by e-mail to: ''oppt.ncic@epa.gov,'' or mail your computer disk to the address identified in this unit. Do 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 standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–51938 and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from October 25, 1999 to November 5, 1999, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs, pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 29 Premanufacture Notices Received From: 10/25/99 to 11/05/99

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0081	10/25/99	01/23/00	CBI	(G) Industrial adhesive	(G) Acrylic copolymer
P–00–0082	10/25/99	01/23/00	Applied Chemical Concepts, LLC	(G) Release coating material used to reduce surface energy of substrates	(G) Silicone modified waterborne polyurethane dispersion
P–00–0083	10/25/99	01/23/00	CBI	(S) Basestock for automotive lubricants; fuel additive for mogas and/or diesel formulations	(G) Trimethylolpropane ester polymer
P–00–0084	10/25/99	01/23/00	CBI	(S) Pigmentation of paints and coatings	(G) Dimethyl ester of 2-2 oxo-1-(1,4-dihydro-2,3-dioxo-6-methoxy-quinoxaline-7-yl carbamoyl-propylazo)terephthalic acid
P–00–0085	10/25/99	01/23/00	DSM Copolymer	(G) Reaction aid in polymer synthesis	(S) Benzeneacetic acid, aplha-chloro-alpha-phenyl-, ethyl ester*
P–00–0086	10/26/99	01/24/00	International Specialty Products	(S) Protectant for digital printing inks	(S) 2-propenamide, *n*-(3-dimethylamino)propyl-2methyl polymer with 1-ethenyl-2-pyrrolidinone, neutralized*
P–00–0087	10/26/99	01/24/00	CBI	(G) Ingredient for use in consumer products; highly dispersive use.	(G) Cyclohexyl carboxalkyl propionate
P–00–0088	10/26/99	01/24/00	CBI	(S) Additive for industrial coating	(G) Organo silane ester
P–00–0089	10/25/99	01/23/00	CBI	(G) Viscosity index improver of use in oils	(G) Alkyl methacrylate, alkylaminoalkylmethacrylamide copolymer
P–00–0090	10/26/99	01/24/00	Reichhold, Inc.	(S) Binders in durable traffic stripes	(G) Hindered amine adduct
P–00–0091	10/28/99	01/26/00	CBI	(G) Basic dye for ground wood fibers	(G) Ethanaminium, *n*-[4-[bis[4-(dialkylamino)phenyl]methylene]-2,5-cyclohexadien-1-ylidene]-*n*-alkyl-, acetate
P–00–0092	10/28/99	01/26/00	CBI	(G) Basic dye for ground wood fibers	(G) Ethanaminium, *n*-[4-[[4-(dialkylamin-o)phenyl]phenylmethylene]-2,5-cyclohexadien-1-ylidene]-*n*-alkyl-, acetate
P–00–0093	10/28/99	01/26/00	CBI	(G) Basic dye for ground wood fibers	(G) Methanaminium, *n*-[4-[(2-chlorophenyl)[4-(dialkylamino)phenyl]methylene]-2,5-cyclohexadien-1-ylidene]-*n*-alkyl-, acetate
P–00–0094	10/27/99	01/25/00	CBI	(G) Colorant for coating compositions	(G) Aromatic sulfonic acid dericative
P–00–0095	10/28/99	01/26/00	CIBA Specialty Chemicals	(S) Hardener for protective epoxy coatings for metal surfaces hardner for for epoxy coatings for flooring or walls	(G) Formaldehyde, polymer with an aliphatic polyamine
P–00–0096	10/28/99	01/26/00	CBI	(G) Additive for manufacture of articles	(G) Vinyl tripolymer
P–00–0097	10/28/99	01/26/00	CBI	(S) Ingredient in (fragrance) compounds	(S) Carbonic acid, 2-hydroxypropyl 5-methyl-2-(1-methylethyl)cyclohexyl ester*
P–00–0098	11/01/99	01/30/00	CBI	(G) Oil field additive	(G) Fatty acid amide
P–00–0099	11/01/99	01/30/00	CBI	(G) Intermediate	(G) Fatty acid condensate
P–00–0100	11/01/99	01/30/00	Loctite Corporation	(S) Component of adhesive/sealant formulations	(G) Subsituted Polydimethy Siloxane*
P–00–0101	10/29/99	01/27/00	CBI	(G) Coating component	(G) Polymer of acrylate esters and methacrylamide esters
P–00–0102	10/29/99	01/27/00	Enterprise Coatings	(G) Textile finish	(G) Aliphatic diisocyanate polymer
P–00–0103	11/01/99	01/30/00	CBI	(G) Printing ink resin	(G) 1,4-butanediol, polymer with 2,4-diisocyanato-1-methylbenzene, 1,2-ethanediamine, polyol and 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane
P–00–0104	11/01/99	01/30/00	CBI	(S) Flourescent whitener for textiles; flourescent whitener for coating paper	(S) 1*h*-benzimidazolium, 2-(6-methoxy-2-benzofuranyl)-1,3-dimethyl-5-(methylsulfonyl)-, acetate, acetate*
P–00–0105	11/02/99	01/31/00	CBI	(G) Component in a sealant or adhesive	(G) Silane terminated polymer
P–00–0106	11/02/99	01/31/00	CBI	(S) Photographic coating fluid ingredient	(G) Trimethyl-2-[(1-oxo-2-propenyl)oxy]ethane derivative, polymer with 2-propenoic acid

I. 29 Premanufacture Notices Received From: 10/25/99 to 11/05/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0107	11/02/99	01/31/00	Reichhold, Inc.	(S) Adhesive for wood to steel lamination; adhesive for wood to wood lamination	(G) Acrylic modified polyurethane polymer
P–00–0108	11/02/99	01/31/00	CBI	(G) The notified substance will be dosed in fuels at extremley small concentrations (approx. 100 parts per billion) for the purposes of confirming the source of a fuel in the field and to protect brand identity in the market place. the commercial consumer will never be exposed to the dye in its powdery form.	(G) Alkoxyamino-aklyl-coumain
P–00–0109	11/05/99	02/03/00	Shell Chemical Company	(S) Monomer for vinyl and acrylic latex paint and adhesives latex application	(S) Neoundecanoic acid, ethenyl ester*

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 25 Notices of Commencement From: 10/25/99 to 11/05/99

Case No.	Received Date	Commencement/Import Date	Chemical
P–98–0733	10/29/99	10/19/99	(S) Pentadecene*
P–98–0735	10/29/99	10/19/99	(S) Heptadecene*
P–98–0736	10/29/99	10/19/99	(S) Pentadecene, branched*
P–98–0737	10/29/99	10/19/99	(S) Heptadecene, branched*
P–98–1260	10/25/99	10/11/99	(G) Organic nitrile
P–99–0149	11/01/99	10/13/99	(S) 3,6-nonadien-1-ol, acetate, (3e, 6z)-*
P–99–0170	11/01/99	10/07/99	(G) Acrylate functional polyester emulsion
P–99–0249	11/02/99	10/05/99	(S) Phosphonous dichloride, (2-methylphenyl)-; phosphonous dichloride, (3-methylphenyl)-; phosphonous dichloride, (4-methylphenyl)-*
P–99–0255	11/02/99	10/09/99	(S) Phosphinic acid, (2-methylpheny)-; phosphinic acid, (3-methylphenyl)-; phosphinic acid, (4-methylphenyl)-*
P–99–0371	11/01/99	10/25/99	(G) Vinyl ester acrylic polymer
P–99–0431	11/01/99	09/29/99	(S) 4-nonanone, 2,6,8-trimethyl-, hydrogenated, by-products from*
P–99–0555	10/29/99	10/18/99	(G) Acrylate copolymer
P–99–0783	11/02/99	10/12/99	(G) Chromate(2-), [3-hydroxy-4-[(2-hydroxy-1-naphthalenyl)azo]-7-nitro-1-substituted][n-[7-hydroxy-8-[(2-hydroxy-5-nitrophenyl)azo]-1-substituted]-, salt
P–99–0819	10/25/99	10/19/99	(G) 2-oxepanone, polymer with dimethylolpropionic acid,substituted diisocyanate, alkyl diamine, cmpd. with trialkylamine
P–99–0828	11/05/99	10/29/99	(G) Counter ions of substituted disulfonic acid naphthalene triazo dye
P–99–0829	11/05/99	10/29/99	(G) Counter ions of substituted disulfonic acid naphthalene triazo dye
P–99–0832	10/25/99	10/19/99	(G) Substituted polyurethane alkylamine salt
P–99–0857	10/26/99	10/13/99	(G) Polyester polyether isocyanate polymer
P–99–0937	10/27/99	10/20/99	(G) Modified epoxy resin
P–99–0939	10/27/99	10/20/99	(G) Amine modified epoxy resin
P–99–0940	10/27/99	10/20/99	(G) Modified epoxy resin
P–99–0945	10/25/99	09/27/99	(S) Hexanedioic acid, polymer with butyl 2-methyl-2-propenoate, 1,6-hexanediol, alpha-hydro-omega-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 2-hydroxyethyl 2-methyl-2-propenoate, 1,1′-methylenebis[4-isocyanatobenzene], methyl 2-methyl-2-propenoate and 2-methyl-2-propenoic acid*
P–99–0968	11/03/99	10/20/99	(G) Substituted amino aromatic diol
P–99–1027	10/28/99	10/15/99	(G) Sodium salt of methacrylic acid copolymer
P–99–1063	10/25/99	10/20/99	(G) Aliphatic acrylic urethane oligomer

List of Subjects

Environmental protection, Premanufacture notices.

Dated: December 1, 1999.

Deborah A. Williams,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 99–32186 Filed 12–10–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

December 8, 1999.

Open Commission Meeting, Wednesday, December 15, 1999

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, December 15, 1999, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, S.W., Washington, D.C.

Item No.	Bureau	Subject
1	Mass Media	Title: Public Interest Obligations of TV Broadcast Licensees. Summary: The Commission will consider a Notice of Inquiry concerning the public interest obligations of television broadcast licensees.
2	Enforcement	Title: Enforcement of Section 277 of the Act. Summary: The Commission will consider action concerning alleged violations of Section 277 of the Telephone Consumer Protection Act.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Media Relations, telephone Number (202) 418–0500; TTY (202) 418–2555.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800; fax (202) 837–3805 and 857–3184; or TTY (202) 293–8810. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its__inc@ix.netcom.com. Their Internet address is http://www.itsi.com.

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770. Audio and video tapes of this meeting can be purchased from Infocus, 341 victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–32407 Filed 12–9–99 3:39 pm]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 6, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Associated Community Bancorp, Inc., Greenwich, Connecticut; to become a bank holding company by acquiring 100 percent of the voting shares of The Greenwich Bank & Trust Company, Greenwich, Connecticut, and Westport National Bank, Westport, Connecticut.

B. Federal Reserve Bank of Atlanta (Cynthia Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Whitney Holding Corporation, New Orleans, Louisiana; to acquire 100 percent of the voting shares of Bank of Houston, Houston, Texas.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Branson Bancshares, Inc., Branson, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Branson Bank, Branson, Missouri (in organization).

D. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin

Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Hunter Holding Company, Hunter, North Dakota; to acquire 100 percent of the voting shares of Coteau Hills Company, Gackle, North Dakota, and thereby indirectly acquire First State Bank of Gackle, Gackle, North Dakota.

Board of Governors of the Federal Reserve System, December 7, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–32142 Filed 12–10–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 27, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Westdeutsche Landesbank Girozentrale, Dusseldorf, Germany; to engage *de novo* through its subsidiary, WestLB Panmure Securities Inc., in making, acquiring, brokering or servicing loans or other extensions of credit (including factoring, issuing letters of credit and accepting drafts) for the company's account or for the account of others, pursuant to § 225.28(b)(1) of Regulation Y; and in providing to customers as agent transactional services with respect to swaps and similar transactions, any transaction described in subparagraph (8) of § 225.28(b), any transaction that is permissible for a state member bank; and any other transaction involving a forward contract, option, futures, or similar contract relating to a commodity that is traded on an exchange, pursuant to § 225.28(b)(7)(v) of Regulation Y.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Stichting Prioriteit ABN AMRO Holding, Stichting Administratiekantoor ABN HMRO Holding, ABN AMRO Holding N.V., ABN AMRO Bank N.V., all of Amsterdam, The Netherlands; and ABN AMRO North America, Chicago, Illinois; to acquire Atlantic Mortgage & Investment Corporation, Jacksonville, Florida, and thereby engage in extending credit and servicing loans pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, December 7, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–32143 Filed 12–10–99; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Performance Review Board; Membership; Senior Executive Service

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Karla J. Hester, Chief of the Executive Resources Staff, Office of the Chief People Officer, General Services Administration, 1800 F Street, NW, Washington, DC 20405, (202) 501–1207.

SUPPLEMENTARY INFORMATION: Section 4313(c) (1) through (5) of title 5 U.S.C. requires each agency to establish in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Board(s). The Board(s) shall review the performance rating of each senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Members of the Performance Review Board are:

1. Thurman M. Davis, Sr., Deputy Administrator (Chairperson).
2. William B. Early, Jr., Chief Financial Officer.
3. Dennis J. Fischer, Commissioner, Federal Technology Service.
4. Stephenie Foster, General Counsel.
5. Martha N. Johnson, Chief of Staff.
6. Gail T. Lovelace, Chief People Officer.
7. Robert A. Peck, Commissioner, Public Buildings Service.
8. William C. Piatt, Chief Information Officer.
9. Frank P. Pugliese, Commissioner, Federal Supply Service.
10. G. Martin Wagner, Associate Administrator for Governmentwide Policy.

Dated: December 6, 1999.

David J. Barram,

Administrator.

[FR Doc. 99–32139 Filed 12–10–99; 8:45 am]

BILLING CODE 6820–BR–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Solicitation of Interested Persons To Serve as Special Consultants to the Community/Tribal Subcommittee of the ATSDR Board of Scientific Counselors

SUMMARY: This notice announces ATSDR's intent to fill 3 special consultant vacancies on the Community/Tribal Subcommittee of ATSDR's Board of Scientific Counselors.

Background

The CTS provides the Board with input, recommendations, and advice on ATSDR's community and tribal community involvement practices, programs, and policies from community/tribal members who live near hazardous waste sites or are otherwise affected by hazardous substances in the community environment. The subcommittee was established, at the request of the Assistant Administrator, ATSDR, to provide the agency, through its Board of Scientific Counselors, (BSC) with a formal vehicle for citizen input.

CONTACT PERSON FOR MORE INFORMATION: To express interest in serving as a special consultant and obtain additional information, contact: Sandee Coulberson, Designated Federal Official, CT/S ATSDR E–56, 1600 Clifton Road, NE, Atlanta, Georgia 30033, Toll-free 1–888–422–8737.

SUPPLEMENTARY INFORMATION: ATSDR conducts public health-related activities at hazardous waste sites and releases, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*). ATSDR established a BSC which is chartered under the Federal Advisory Committee Act (5 U.S.C. app.). In 1994, the chair of the BSC, ATSDR, selected three community/tribal representatives as consultants to ensure that its deliberations included the views of community and tribal members who live around Superfund and other hazardous waste sites and are representatives of groups that work at local, regional, or national locations with these affected communities. To supplement the work of these consultants, nine additional community/tribal representatives were added. Four members of the BSC serve on this Subcommittee, one of which is appointed as chair. The Community/Tribal Subcommittee's (CTS) objective is to provide the BSC, ATSDR, with the views and recommendations of community/tribal representatives on ATSDR's community involvement programs, practices, policies, and other relevant issues impacting communities and tribes who live near Superfund and hazardous waste sites. The Subcommittee reviews ATSDR's community involvement programs, and policies; provides advice, findings, and recommendations to the Board on these issues; and bring broad-based community/tribal involvement issues to the attention of the Board. The Community and Tribal Subcommittee presents its findings, advice, and recommendations to the full Board. The BSC will discuss and review reports of the Subcommittee and may forward recommendations to the Agency for action. The Community/Tribal Subcommittee will periodically meet and/or hold conference calls. A group consisting of special consultants, the CTS Chair and the Designated Federal Official will review the applications and develop a short list to be recommended to the Agency for consideration. The Agency, in consultation with the BSC chair will then select the three community representatives to fill the vacancies, with special consideration given to the recommended slate. Accordingly, any person who lives in a community affected by an National Priority list or other hazardous waste site; who is a representative of a group that works at local, regional, or national locations with these communities; or who wishes to be considered for serving as a special consultant on this Subcommittee should write or call the ATSDR contact person listed above to obtain additional information.

Application: Please complete the following application and return it to the address listed by Friday, January 14, 2000.

Application

Community and Tribal Subcommittee

Agency for Toxic Substances and Disease Registry

(ATSDR) December 1, 1999

Please fill out this form as legibly as possible to ensure that photocopies of it are readable. *Applications must be received by Friday, January 14, 2000.* Please send to: Sandee Coulberson, Designated Federal Official, CT/S, ATSDR M/S E–56, 1600 Clifton Road, NE, Atlanta, Georgia 30033, Phone: 1–888–422–8737, Fax: (404) 639–4699.

Name: _____

Street Address: _____

_____

City, State, Zip: _____

Telephone: _____

Fax: _____

E-mail: _____

Employment and employer(s) for last five years: _____

_____

_____

_____

_____

Please check the corresponding box for your response to the following questions; please keep any written responses brief.

(1) Do you live in a community or on a reservation that contains a site contaminated with toxic substances or are you a member of an organization that works on environmental health/toxic substance issues with such affected communities/tribes? *Check all that apply*

____Yes, live in such a community/reservation

____Yes, member of such an organization

____No

If you checked no, please skip to question 9. ATSDR Community and Tribal Subcommittee Application, continued:

(2) What type of site is it?

____National Priorities List (Superfund NPL)

____Department of Energy

____Department of Defense

____State

____Not sure/don't know

____Other

(3) What is the status of site cleanup?

____Cleanup underway

____No work done

____Cleanup completed

____Not sure/don't know

(4) How would you characterize your community/tribe?

____Rural

____Suburban

____Urban

____Tribal Lands

____Not sure/don't know

(5) How would you characterize the racial/ethnic makeup of your community/tribe?

____White

____Hispanic

____Native American

____Mixed/no group predominate

____Not sure/don't know

____African-American____Asian

(6) How would you characterize the economic status of your community/tribe?

____Lower income

____Middle income

____Upper income

____Not sure/don't know

(7) Do you believe your personal/family health has been harmed due to exposure to toxic substances in the environment?

____Yes

____Possibly

____No

(7a) *If you are a trial member,* is contamination of traditional food supply thought to be a problem?

____Yes

____Possibly

____No

(8) Are you a member of a community/tribal organization focused on the site?

____Yes

____No

(8a) If yes, please describe _____

_____

_____

_____

_____

_____

(9) Are you familiar with the Agency for Toxic Substances and Disease Registry (ATSDR)?

____Yes

____No

(10) Have you either sought assistance from, or previously been involved with ATSDR?

____Yes

____No

(11) Has ATSDR sponsored a health assessment or health study in your community?

____Yes

____No

____Not sure/don't know

(12) Have you attended other national or regional ATSDR meetings in the last 5 years?

____Yes

____No

(13) Are you a member of an organization—other than the one you may have noted in question 8—focused on toxic substances/environmental health?

____Yes

____No

(13a) If yes, what is the scope of the organization?

____Local

____Regional

____National

(13b) Please describe the organization

_____

_____

_____

_____

(14) How many years have you been involved in toxic substance/environmental health issues?

____Years

(15) How many hours per month on average can you make available for telephone calls, periodic meetings, a review of materials?

____Hours per month

(16) Have you in the past or are you now participating in an advisory group similar in structure to the Community/Tribal Subcommittee?

____Yes
____No

(16a) If yes, please describe the group and your role

(17) QUALIFICATIONS/BACKGROUND: Please briefly note your knowledge of/ experience with toxic substance/ environmental health issues. List relevant self-education/ research, workshops attended, and/or formal training.

(18) CURRENT ISSUES: What are your views on ATSDR's current approach to working with communities/tribes?

(19) EXPECTATIONS: What type of input, recommendations, and advice do you envision the Subcommittee providing, and what type of outreach would you intend to do in order to formulate your recommendations to the Board of Scientific Counselors?

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: December 7, 1999.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–32149 Filed 12–10–99; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Grants for Education Programs in Occupational Safety and Health To Prepare Health Services Researchers, Program Announcement 00012

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): Grants for Education Programs in Occupational Safety and Health to Prepare Health Services Researchers, Program Announcement 00012, meeting.

Times and Dates: 8 a.m.–9 a.m., January 10, 2000 (Open); 9 a.m.–5 p.m., January 10, 2000 (Closed); 8 a.m.–5 p.m., January 11, 2000 (Closed).

Place: Centers for Disease Control and Prevention, 1600 Clifton Rd., Atlanta, Ga., Building 16, Room 1111.

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 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 00012.

Contact Person for More Information: Bernadine Kuchinski, Occupational Health Consultant, National Institute for Occupational Safety and Health, Office of Extramural Programs, CDC, 1600 Clifton Road, N.E., m/s D30 Atlanta, Georgia 30333. Telephone 404/639–3342, e-mail bbk1@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: December 7, 1999.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention CDC.

[FR Doc. 99–32148 Filed 12–10–99; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Mine Safety and Health Research Advisory Committee: Meeting

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 committee meeting.

Name: Mine Safety and Health Research Advisory Committee (MSHRAC).

Time and Date: 9 a.m.–4 p.m., January 6, 2000.

Place: The Washington Court, 525 New Jersey Avenue, NW, Washington, DC 20001–1527.

Status: Open to the public, limited only by space available. The meeting room accommodates approximately 50 people.

Purpose: The Committee is charged with advising the Secretary; the Assistant Secretary for Health and Surgeon General; the Director, Centers for Disease Control and Prevention (CDC); and the Director, National Institute for Occupational Safety and Health, CDC, on priorities in mine safety and health research, including grants and contracts for such research, 30 U.S.C. 812(b)(2), Section 102(b)(2).

Matters to be Discussed: Agenda items include the Director's comments; Report from Associate Director-Mining; Mine Safety and Health Administration's Program to Eliminate Black Lung; Update on Dust Monitors; Hearing Loss Prevention Research at Pittsburgh Research Laboratory; Coal Diesel Partnership Status; Activity to Help Weakened State of Mining Schools; and future activities of the Committee.

Agenda items are subject to change as priorities dictate.

Contact person for more information: Larry Grayson, Ph.D., Executive Secretary, MSHRAC, NIOSH, CDC, 200 Independence Avenue, SW, Room 715–H, Humphrey Building, Washington, DC 20201, telephone 202/401–2192, fax 202/260–4464.

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: December 7, 1999.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–32150 Filed 12–10–99; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96F–0293]

Avecia Inc.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 6B4516) proposing that the food additive regulations be amended to provide for the safe use of 2-methyl-4,5-trimethylene-4-isothiazolin-3-one as a preservative for paper and paperboard coatings used in contact with food.

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

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 27, 1996 (61 FR 44067), FDA announced that a food additive petition (FAP 6B4516) had been filed by Zeneca Inc., Foulkstone 1405, 2d, 1800 Concord Pike, Wilmington, DE 19850–5457. The petition proposed to amend the food additive regulations in § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) to provide for the safe use of 2-methyl-4,5-trimethylene-4-isothiazolin-3-one as a preservative for paper and paperboard coatings used in contact with food. Since publication of the filing notice, Zeneca Inc.'s, specialty chemicals group has been spun-off to form a new company, Avecia Inc., 1405 Foulk Rd., Wilmington, DE 19850–5457. Avecia Inc., has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: November 29, 1999.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–32100 Filed 12–10–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Hematology and Pathology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Hematology and Pathology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 15, 1999, 9 a.m. to 4:30 p.m.

Location: Corporate Bldg., conference room 20B, 9200 Corporate Blvd., Rockville, MD.

Contact Person: Michelle Y. Stuart, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1293, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12515. Please call the Information Line for up-to-date information on this meeting.

Procedure: On December 15, 1999, from 9 a.m. to 10 a.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by December 13, 1999. Those desiring to make formal oral presentations should notify the contact person by December 13, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation. Time allotted for the presentations may be limited.

Closed Committee Deliberations: On December 15, 1999, from 10 a.m. to 4:30 p.m., the meeting will be closed to the public. The committee will hear and review trade secret and/or confidential commercial information on a product development protocol (5 U.S.C. 552b(c)(4)). This portion of the meeting is closed to permit discussion of this information.

FDA regrets that it was unable to publish this notice 15 days prior to the December 15, 1999, Hematology and Pathology Devices Panel of the Medical Devices Advisory Committee meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the Hematology and Pathology Devices Panel of the Medical Devices Advisory Committee were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 7, 1999.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 99–32239 Filed 12–8–99; 4:55 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–3029–N]

Medicare Program; Meeting of the Medical and Surgical Procedures Panel of the Medicare Coverage Advisory Committee—January 19 and 20, 2000

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting of the Medical and Surgical Procedures Panel of the Medicare Coverage Advisory Committee (MCAC). The panel provides advice and recommendations to the agency about clinical coverage issues. The panel will hear and discuss presentations from interested persons regarding behavioral interventions (pelvic muscle rehabilitation) for the management of non-neurogenic urinary incontinence in adults. The meeting will primarily focus on two management options: biofeedback and pelvic floor electrical stimulation. Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)).

DATES:

The Meeting: The meeting will be held on January 19, 2000 from 8:30 a.m. until 5 p.m., E.D.T., and on January 20, 2000, from 8:30 a.m. until 3:00 p.m., E.D.T.

Deadline for Presentations and Comments: You must submit formal presentations and written comments to the For Further Information Contact by December 29, 1999, 5 p.m., E.D.T.

Special Accommodations: Persons attending the meeting who are hearing or visually impaired and have special requirements, or a condition that requires special assistance or accommodations, are asked to notify the Executive Secretary by December 15, 1999.

ADDRESSES: *The Meeting:* The meeting will be held at the Baltimore Marriott Inner Harbor, 110 S. Eutaw Street, Baltimore, MD 21201.

Presentations and Comments: Submit formal presentations and written comments to Constance A. Conrad, Executive Secretary; Office of Clinical Standards and Quality; Health Care Financing Administration; 7500 Security Boulevard; Mail Stop S3–02–01; Baltimore, MD 21244.

Website: You may access up to date information on this meeting at www.hcfa.gov/quality/8b.htm.

FOR FURTHER INFORMATION CONTACT: Constance A. Conrad, Executive Secretary, 410–786–4631.

SUPPLEMENTARY INFORMATION: On August 13, 1999, we published a notice (64 FR 44231) to describe the MCAC, which provides advice and recommendations to us about clinical coverage issues. This notice announces the following public meeting of the MCAC:

Current Panel Members

Alan M. Garber, M.D.; Michael D. Maves, M.D.; Angus M. McBryde, M.D.; H. Logan Holtgrewe, M.D.; Kenneth P. Brin, M.D.; Les J. Zendle, M.D.; Bruce Sigsbee, M.D.; Linda D. Bradley, M.D.; James P. Rathmell, M.D.; Arnold M. Epstein, M.D.; Phyllis E. Greenberger, M.S.W.; Marshall S. Stanton, M.D.

Meeting Topic

The Panel will hear and discuss presentations from interested persons regarding behavioral interventions for the management of non-neurogenic urinary incontinence in adults. The meeting will primarily focus on two management options: biofeedback and pelvic floor electrical stimulation.

Procedure and Agenda

This meeting is open to the public. The panel will hear oral presentations from the public for approximately 2 hours and 30 minutes on the first day of the meeting. The Panel may limit the number and duration of oral presentations to the time available. It you wish to make formal presentations you must notify the For Further Information Contact, and submit the following by the Deadline for Presentations and Comments date listed in the Dates section of this notice: a brief statement of the general nature of the evidence or arguments you wish to present, the names and addresses of proposed participants, and an estimate of the time required to make the presentation. We will request that you declare at the meeting whether or not you have any financial involvement with manufacturers of any items or services being discussed (or with their competitors).

After the public presentation, we will make a presentation to the Panel. After our presentation, the Panel will deliberate openly on the topic. Interested persons may observe the deliberations, but the Panel will not hear further comments during this time except at the request of the chairperson. At the end of the Panel deliberations, the Panel will allow at least a 30-minute open public session for any attendee to address issues specific to the topic. After which, the members will vote and the panel will make its recommendation.

Authority: 5 U.S.C. App. 2, section 10(a)(1) and (a)(2).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 7, 1999.

Jeffrey L. Kang,

Director, Office of Clinical Standards and Quality, Health Care Financing Administration.

[FR Doc. 99–32165 Filed 12–10–99; 8:45 am]

BILLING CODE 4120–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: November 1999

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of November 1999, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, *e.g.,* a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject, city, state	Effective date
PROGRAM-RELATED CONVICTIONS	
CAVA, JOSE LA MIRADA, CA	12/20/1999
DE LA ROSA, ALBERTO JESUS MIAMI, FL	12/20/1999
DEMERS, KAREN ANN SEATTLE, WA	12/20/1999
FAULKNER, MICHAEL LENEXA, KS	12/20/1999
FERNANDEZ, LUIZ M MIAMI, FL	12/20/1999
FERNANDEZ, CARMEN VALDES MIAMI, FL	12/20/1999
FRAZIER, TRAVIS E POINT, GA	12/20/1999
GRANDA, AGUSTIN F MIAMI, FL	12/20/1999
GREEN, SUZANNE K PRAIRIE VILLAGE, KS	12/20/1999
JENKINS, THOMAS LOUISIANA, MO	12/20/1999
JENKINS, DAVID LOUISIANA, MO	12/20/1999
KENT, DEBORAH JACKSON, MS	12/20/1999
KRATMAN, ALEXANDER EVERETT, WA	12/20/1999
KWAN, DON SHEK KENT, WA	12/20/1999
LANCASTER, PATSY A KIRKSVILLE, MO	12/20/1999
MARTIN, FRANK JONESBORO, AR	12/20/1999
MCKENNA, WORMAN BERNARD HENDERSON, NV	12/20/1999
MEAN, RONG R LONG BEACH, CA	12/20/1999
MEYER, FRANK WILLIAM WARSAW, MO	12/20/1999
MINO ROMERO, ANITA MAE LAKEWOOD, CO	12/20/1999
OLIVER, CHARLES E ANN ARBOR, MI	12/20/1999
ORTIZ, JORGE TOA BAJA, PR	12/20/1999
PERALTA, MARIA TERESA HIALEAH, FL	12/20/1999
POLIAKOV, VITALY REDMOND, WA	12/20/1999
PROBST, JOSEPH C MANCHESTER, KY	12/20/1999
RASIN, PAVEL BELEVUE, WA	12/20/1999
RIVERA-CRUZ, CARLOS	12/20/1999

Subject, city, state	Effective date
CEIBA, PR	
STATLER, CATHY ..... PHOENIX, AZ	08/30/1999
STATLER, GLEN ..... PHOENIX, AZ	08/30/1999
TENNER, EMMER ..... FAYETTE, MS	12/20/1999
THOMPSON, LOIS R ..... DECATUR, GA	12/20/1999
TOPHAM, MARY ..... DALLAS, TX	12/20/1999
TOPHAM, PETER ..... DALLAS, TX	12/20/1999
VASQUEZ, FRANCES ANNE BISBEE, AZ	12/20/1999
FELONY CONVICTION FOR HEALTH CARE FRAUD	
HANSEN, ROY WAYNE ..... INDIAN SPRINGS, NV	12/20/1999
LUCIANO, MARK JOSEPH ..... SAN DIEGO, CA	12/20/1999
PATIENT ABUSE/NEGLECT CONVICTIONS	
CARD, DENA A ..... BRISTOL, RI	12/20/1999
CARRUTH, CONRAD ALLAN CUTTINGSVILLE, VT	12/20/1999
FLORIANT, ROBIN LYNN ENID, OK	12/20/1999
FREDERICK, TRINA L ..... WSHGTN COURT HOUSE, OH	12/20/1999
GLYNN, LARRY ..... MOKANE, MO	12/20/1999
HAMILTON, CARMEN J ..... CINCINNATI, OH	12/20/1999
HOLLAND, QUINTON DEMOND ..... SAN ANTONIO, TX	12/20/1999
KEEM, EVELYN ..... UTICA, NY	12/20/1999
MALKOVSKY, CINDY ..... MADISON, OH	12/20/1999
MCCOY, BOBBIE ..... DENVER, CO	12/20/1999
MOORE, SANDRA COOPER .. GAUTIER, MS	12/20/1999
PUSZTAI, MICHELLE M ..... HOMERVILLE, OH	12/20/1999
RODGERS, JOANNE ..... KNIFLEY, KY	12/20/1999
SPENCER, FAYE GUILDA ..... WIGGINS, MS	12/20/1999
THERRIEN, SARAH S ..... SCHENECTADY, NY	12/20/1999
TISDALE, SHAWN L ..... NEWARK, OH	12/20/1999
WHENRY, MICHAEL WAYNE JR ..... ENID, OK	12/20/1999
CONVICTION FOR HEALTH CARE FRAUD	
ROBERTS, SHANNON MICHELLE ..... SUMMERVILLE, SC	12/20/1999
CONTROLLED SUBSTANCE CONVICTIONS	
ZALDIVAR, RAUL M ..... MIAMI, FL	12/20/1999
LICENSE REVOCATION/SUSPENSION/ SURRENDERED	
ANTONSSON, KARIN A ..... SAN FRANCISCO, CA	12/20/1999
BERTHEOLA, REBECCA RENEE HALE ..... MANCHESTER, CA	12/20/1999
BLAKE, DONALD K JR ..... RANCHO CUCAMONGA, CA	12/20/1999
BROWN, ALBERT R ..... LOS ANGELES, CA	12/20/1999
CAIN, DORIS NADEAN ..... ROSEVILLE, CA	12/20/1999
CAMPBELL, SUSAN M ..... SEBASTOPOL, CA	12/20/1999
CARTHY, MICHAEL N ..... ARVADA, CO	12/20/1999
CEARNETCHI, EMILIA ..... BROOKLYN, NY	12/20/1999
COLLIER, RITA FAYE ..... SULLIGENT, AL	12/20/1999
CONAN, CHRISTINE B ..... DALY, CA	12/20/1999
CONYERS, WANDA JEAN ..... WASHINGTON PARK, IL	12/20/1999
CORBITT, DEANA SUZETTE .. SECTION, AL	12/20/1999
DENTON, STEPHEN L ..... ATHENS, TN	12/20/1999
DILUCCHIO, PATRIZIA ANNE MONTEREY, CA	12/20/1999
DUMAS, JACQUELYN DAWN JACKSON ..... GULF SHORES, AL	12/20/1999
ELMORE, DIANE ELIZABETH LAKELAND, FL	12/20/1999
EMMI, ANGELO M ..... MANLIUS, NY	12/20/1999
FREEMAN, BETTY DIANNE LOSE ..... THEODORE, AL	12/20/1999
GIPSON, BRUCE M ..... SHELBYVILLE, TN	12/20/1999
GRIM, NORTON L ..... VANCOUVER, WA	12/20/1999
HALL, BARNETT J ..... HENDERSONVILLE, TN	12/20/1999
HALLMAN, EMILY FRANCES SHELTER ISLAND HGTS, NY	12/20/1999
HALSTEAD, MYRA JANICE .... CLEVELAND, AL	12/20/1999
HALTERMAN, GAIL ..... AURORA, CO	12/20/1999
HINOJOSA, VITAL ..... PALM SPRINGS, CA	12/20/1999
HUSBAND, HELEN LYNETTE SANDERSVILLE, MS	12/20/1999
JAYE, MELVIN LYNN ..... MCKENZIE, AL	12/20/1999
JENKINS, DAVID RICHARD .... MONTGOMERY, AL	12/20/1999
JINKINS, JERRY J ..... COLORADO SPRGS, CO	12/20/1999
JONES, SHERRY R ..... LEBANON, TN	12/20/1999
JONES, JOAN A RHODES ..... BIRMINGHAM, AL	12/20/1999
KATZ, NANCY A ..... CHICAGO, IL	12/20/1999
KAYLOR, KIMBERLEY A ..... AURORA, CO	12/20/1999
KOHAUT, ANNE MARIE ..... BIRMINGHAM, AL	12/20/1999
KRAHN, JANE E ..... ROCHESTER, MN	12/20/1999
LAWSON, KATHLEEN C ..... OSYKA, MS	12/20/1999
LOKHANDE, TUKARAM ..... RICHMOND, VA	12/20/1999
LONG, ROSANA MOREY ..... MONTGOMERY, AL	12/20/1999
MARTIN, REBECCA ANN ..... SPRINGTOWN, TX	12/20/1999
MARTINEZ, PAMELA M ..... MARIETTA, GA	12/20/1999
MEAGHER, PATRICK A ..... FARRAGUT, TN	12/20/1999
MITCHELL, FRANCES ANN .... LUBBOCK, TX	12/20/1999
MITCHUM, BRENDA ..... DAVISON, MI	12/20/1999
NIEBEL, GAIL LEACH ..... PALM DESERT, CA	12/20/1999
NOPPER, ANN LOUISE TRASER ..... SARASOTA, FL	12/20/1999
NORWOOD, MARK M ..... BILOXI, MS	12/20/1999
OSLAY, LAWRENCE E ..... ASHTON, IL	12/20/1999
PITMAN-KOREN, KATHERINE E ..... HILHAM, TN	12/20/1999
POOLOS, MARK DENTON ..... UNION GROVE, AL	12/20/1999
PRICE, DEBORAH A ..... GREENFIELD, MA	12/20/1999
RICHARDSON, PATTI B ..... GLOSTER, MS	12/20/1999
RICHARDSON, MADELYN CARROL ..... MOBILE, AL	12/20/1999
RINE, DONITA GAY ..... ST PETERSBURG, FL	12/20/1999
ROSALES, DALIA J ..... LAKEWOOD, CO	12/20/1999
ROSE, CHARLOTTE ANN ..... VERBENA, AL	12/20/1999
SCOTT, JOHN A ..... GERMANTOWN, TN	12/20/1999
SEMLER, EDITH JANE ..... BISMARCK, ND	12/20/1999
SHERMAN, CHRISTINE A ..... COLORADO SPNGS, CO	12/20/1999
SHUTE, LINDA SHARON ..... SAN ANTONIO, TX	12/20/1999
SIMMONS, SALLYE B ..... WIGGINS, MS	12/20/1999
SULLENTRUP, CHARLES L .... BARTLETT, TN	12/20/1999
SWINDLE, DARLENE RENIA .. JASPER, AL	12/20/1999
TAYLOR, DEBRA D PETTIBONE ..... LAKE CITY, FL	12/20/1999
THOMAS, MELISSA RENEE TINGLE ..... NORTHPORT, AL	12/20/1999
TOOLE, THELMA LARONE EDWARDS ..... PRATTVILLE, AL	12/20/1999
TRAMEL, MILDRED VIVIAN .... HUNTSVILLE, AL	12//20/1999
TREGANOWAN, KEVIN	12/20/1999

Subject, city, state	Effective date
WOONSOCKET, RI	
UNDERWOOD, GWENDOLYN HAMBRIGHT TUSCALOOSA, AL	12/20/1999
UNDERWOOD, MARY C KEZZIAH COLUMBUS, GA	12/20/1999
WALKER, PATRICK O'NEAL SELMA, AL	12/20/1999
WALLACE, LOIS J HARDY HANCEVILLE, AL	12/20/1999
WATKINS, JUDITH MAEBELL TUSCUMBIA, AL	12/20/1999
WESTWOOD, RENEE M WARREN, MI	12/20/1999
WILLIAMS, DEBORAH K OCEAN SPRINGS, MS	12/20/1999
WILLIAMS, MARK STEVEN MENLO PARK, CA	12/20/1999
WITTMAYER, JODY GRAND FORKS, ND	12/20/1999
WOOTEN, DUSTY CANDEANIA ATMORE, AL	12/20/1999
YOOD, STEVEN H NASHVILLE, TN	12/20/1999
FRAUD/KICKBACKS	
GILL, CHRISTOPHER F LEXINGTON, SC	06/24/1999
MIDLAND MEDICALS, INC LEXINGTON, SC	06/24/1999
SOUTHWEST HOME HEALTH PHOENIX, AZ	08/30/1999
OWNED/CONTROLLED BY CONVICTED/ EXCLUDED	
ADVANCED CHIROPRACTIC CENTER SANTA CLARA, CA	12/20/1999
ADVANCED CHIROPRACTIC CLINIC JAMAICA, NY	12/20/1999
AFFORDABLE CHIROPRACTIC WHEAT RIDGE, CO	12/20/1999
ANN L LAGONEGRO, D M D, P C GLOUCESTER, VA	12/20/1999
B & G DIAGNOSTIC SYSTEMS, INC BOCA RATON, FL	12/20/1999
CALLENDER & CALLENDER LOS ANGELES, CA	12/20/1999
CANOGA CHIROPRACTIC LOS ANGELES, CA	12/20/1999
COASTAL INDUSTRIAL HEALTH CARE LOS ANGELES, CA	12/20/1999
COTHRAN CHIROPRACTIC CLINIC POTEAU, OK	12/20/1999
FAMILY DENTISTRY PATERSON, NJ	12/20/1999
GREGORY A WALSH, D C, P A DAYTONA BEACH, FL	12/20/1999
HAWKINS CHIROPRACTIC CLINIC SANDY, UT	12/20/1999
IXE, INC SAN FRANCISCO, CA	12/20/1999
PAN AMERICAN DRUGS, INC MIAMI, FL	12/20/1999
PHOENIX TREATMENT CTR, P C PHOENIX, AZ	12/20/1999
R & A DIAGNOSTIC SERVICES, INC MIAMI, FL	12/20/1999
RAINBOW CHIROPRACTIC HOUSTON, TX	12/20/1999
RIVERLAND MEDICAL CENTER BALDWIN, LA	12/20/1999
SANDERS CHIROPRACTIC INDIAN HARBOUR BCH, FL	12/20/1999
DEFAULT ON HEAL LOAN	
ALLEN, SAM J BROWNSVILLE, TX	12/20/1999
ARTEAGA, WALTER J PASO ROBLES, CA	12/20/1999
BENAVIDEZ, CHARLES A ELK GROVE, CA	12/20/1999
BROWN, JON DAVID PHOENIX, AZ	12/20/1999
CALDWELL, ANDRIA P BIRMINGHAM, AL	12/20/1999
CAMILING, ADOR Z ALTADENA, CA	12/20/1999
CARSON, BRAD W OMAHA, NE	12/20/1999
CONTRERAS, LAWRENCE OCEANSIDE, CA	12/20/1999
ENCARNACION, DANNY R BRONX, NY	12/20/1999
ENGEL, ROB L GARDEN GROVE, CA	12/20/1999
EPSTEIN, JUDY J SAN DIEGO, CA	12/20/1999
FAIR, BENNY JR FORT WAYNE, IN	11/08/1999
GRATIA, ALLAN R BANDERA, TX	12/20/1999
GUTIERREZ, OSCAR V LAREDO, TX	12/20/1999
HARMAN, HAROLD C PHILADELPHIA, PA	12/20/1999
HARNESS, DONITA M HAMLET, IN	12/20/1999
HARPER, JOHN L OCEANSIDE, CA	12/20/1999
IGBOKWE, NDUBUISI A HOUSTON, TX	12/20/1999
INMAN, THOMAS C JR HOUSTON, TX	12/20/1999
JOHNSON, CRAIG B GLENDALE, CA	12/20/1999
LOCK, JANE M ROYERSFORD, PA	12/20/1999
LONGO, TONY D GRESHAM, OR	12/20/1999
LOVELACE, GEORGE E RUSSELL, KY	12/20/1999
LUTA, PATRICIA L SANTA ROSA, CA	12/20/1999
MAGER, DENNIS J DEPEW, NY	12/20/1999
MILES, JAMIE A MOORPARK, CA	12/20/1999
MOAREFI, MAHMOUD R LOS ANGELES, CA	12/20/1999
MOORE, KEITH S KANSAS CITY, MO	12/20/1999
NEWELL, CHARLES F SANTEE, CA	12/20/1999
NGUYEN, TUAN ANN PORTLAND, OR	12/20/1999
ORNER, RETA G CHICO, CA	12/20/1999
PORTILLO, CARLOS J SAN JOSE, CA	12/20/1999
SABAL, MARY M ORANGE BEACH, AL	12/20/1999
SCHARTMAN, ALLYSON C SAN DIEGO, CA	12/20/1999
SCHIFF, BARBARA S WOODLAND HILLS, CA	12/20/1999
STEVENSON, ROBERT C ALEXANDRIA, VA	12/20/1999
STRONG-FIELDS, MICHELLE A PHILADELPHIA, PA	12/20/1999
TAYLOR, LINDA C JONESBORO, AR	12/20/1999
TAYLOR, JAMES W HAMPTON, VA	12/20/1999
TRIPP, ROBERT A LAKEWOOD, CA	12/20/1999
WILSON, RICHARD E OPELOUSAS, LA	12/20/1999

Dated: December 2, 1999.

Joanne Lanahan,

Director, Health Care Administrative Sanctions, Office of Inspector General.

[FR Doc. 99–32216 Filed 12–10–99; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute: Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Further Development and Commercialization of Methods Designed To Screen and Use Modulators of Nitric Oxide Synthase 2 (NOS2) Activity for the Diagnosis and Treatment of Cancer

The National Cancer Institute's Laboratory of Human Carcinogenesis (LHC) has identified and characterized *in vitro* and *in vivo* methods designed to screen modulators of NOS2 activity using cell lines that are deficient in the expression of the tumor suppressor gene, p53. Furthermore, LHC has created methods to predict the chemotherapeutic benefit of administering NOS2 inhibitors to cancer patients as a method for treating cancer.

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute (NCI) seeks a Cooperative Research and

Development Agreement (CRADA) Collaborator to aid NCI in the identification and characterization of modulators of nitric oxide synthase 2 (NOS2) activity and in the development, evaluation and commercialization of methods for treating cancer that involve the clinical use of novel NOS2 modulators. NOS2 is an inducible enzyme that produces nitric oxide (NO), a mutagenic and angiogenic molecule (1,2). To define a role of NO in tumor progression, NCI has generated human carcinoma cell lines that produce NO constitutively. NCI has determined that tumor-associated NO production may promote cancer progression by providing a selective growth advantage to tumor cells bearing a mutant form of the tumor suppressor and transcription factor, p53. Furthermore, NCI has determined that accelerated tumor growth in these cells is associated with an increased expression of the vascular endothelial growth factor (''VEGF''), leading to tumor neovascularization. NCI has generated methods for screening modulators of NOS2 activity using cells lines that contain a mutant p53 gene. In addition, NCI has generated methods for using these cell lines in screening assays that test the use of potential NOS2 inhibitors in the treatment of patients with tumors lacking p53 function.

Several applications for this technology have been identified. They include the use of these methods as (1) diagnostic assays to determine the genetic and functional status of the p53 gene; (2) assays to predict the chemotherapeutic benefit of administering current NOS2 inhibitors to cancer patients; and (3) assays to screen for novel modulators of NOS2 activity for use in the treatment of cancers. NCI is looking for a CRADA Collaborator with a demonstrated record of success in cancer diagnostics and therapeutics. The proposed term of the CRADA can be up to five (5) years.

DATES: Interested parties should notify the Technology Development and Commercialization Branch of the NCI in writing of their interest in filing a formal proposal no later than (February 11, 2000. Potential CRADA Collaborators will then have an additional thirty (30) days to submit a formal proposal.

ADDRESSES: Inquiries and proposals regarding this opportunity should be addressed to Holly S. Symonds, Technology Development Specialist (Tel. # 301–496–0477, FAX # 301–402–2117), Technology Development and Commercialization Branch, National Cancer Institute, 6120 Executive Blvd., Suite 450, Rockville, MD 20852. Inquiries directed to obtaining patent license(s) needed for participation in the CRADA opportunity should be addressed to Richard Rodriguez, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Blvd., Suite 325, Rockville, MD 20852, (Tel. 301–496–7056, ext. 287; FAX 301–402–0220).

SUPPLEMENTARY INFORMATION: A Cooperative Research and Development Agreement (CRADA) is the anticipated joint agreement to be entered into with NCI pursuant to the Federal Technology Transfer Act of 1986 and Executive Order 12591 of April 10, 1987 as amended by the National Technology Transfer Advancement Act of 1995. NCI is looking for a CRADA partner to collaborate with NCI in the further development and commercialization of screening assays and methods relating to the analysis of NOS2 activity in cancers exhibiting a nonfunctional p53 and to the use of NOS2 inhibitors in the treatment of such cancers. The expected duration of the CRADA would be from one (1) to five (5) years.

Increased expression of inducible nitric oxide synthase (NOS2) has been found in a variety of human cancers (3–6). NOS2 is an inducible enzyme that produces nitric oxide (NO), a mutagenic and angiogenic molecule (1,2). NO is an activator of the p53 tumor suppressor gene function (7–9), however, p53 will repress the expression of NOS2, both *in vitro* and *in vivo* (8,10,11). To investigate the role of NO in tumor progression, NCI created genetically engineered human carcinoma cell lines that constitutively produce endogenous NO. Using these cell lines, NCI has found that the effect of NO on tumor growth is p53-dependent due to its ability to repress the expression of NOS2, and that endogenously produced NO accelerates tumor growth by inducing expression of the vascular endothelial growth factor (VEGF) and neovascularization.

The NCI's data indicates that, in the presence of wild-type p53, constitutive expression of NOS2 in tumors could lead to a p53-mediated growth arrest in the epithelial cells closely surrounding the source of NO production. The growth inhibition of such cells would provide a strong selective pressure for a mutation to occur in the p53 gene. Indeed, tumors of the breast, brain, head and neck and colon that overexpress NOS2 have a high frequency of p53 mutations (3, 4, 6, 11, 12). Tumor growth would then be further supported by the NO-mediated induction of VEGF and angiogenesis. Since p53 has been shown to regulate the production of NO by altering the activity of NOS2, NO production would remain unchecked, supporting the growth of the tumor (8, 10, 11). The loss of p53 function in p53 deficient or mutant cells would permit both the growth of tumor cells in the presence of moderate NO concentrations and the release of angiogenic factors such as VEGF. However, NCI suggests that such tumors with mutant p53 function could be therapeutically and prophylactically treated with NOS2 inhibitors.

To address this possibility, NCI has developed a series of methods aimed at screening modulators of NOS2 activity using p53 mutant cells that express NOS2. In one method, modulators of NOS2 activity are screened *in vitro,* using p53 mutant cells that constitutively or endogenously express NOS2. The cells are exposed to potential NOS2 inhibitors, and the level of VEGF expression is determined by various methods. In addition, the level of nitrate versus nitrite produced is measured to determine the level of NOS2 activity in the presence of the potential inhibitor compounds.

To further assess the therapeutic benefit of a potential NOS2 inhibitor, NCI has developed an *in vivo* method of screening modulators of NOS2 activity. In such method, p53 mutant cells that constitutively or endogenously express NOS2 are implanted into an immune deficient athymic nude mouse model and then are treated with potential NOS2 inhibitor compounds. Modulation of NOS2 activity can be determined as above and also by measuring tumor growth in the treated animals as compared to untreated control animals.

NCI suggests that the benefit of administering potential NOS2 inhibitors to cancer patients may be assessed by determining the p53 status and NOS2 expression pattern of the tumors. If a patient has a cancer that expresses NOS2 and is deficient in normal p53 activity, then the patient may be a candidate for treatment with NOS2 inhibitors. NCI has developed methods to both assess the benefit of such treatment and to administer potential NOS2 inhibitors to cancer patients in a clinical setting.

NCI is seeking one or more CRADA Collaborators to further develop the above methods for preclinical, diagnostic and clinical uses. Specifically, NCI believes the methods could be applied to a drug screening protocol in which potential modulators of NOS2 could be identified and characterized. Furthermore, NCI predicts that the methods could be applied to a diagnostic kit for use in a

clinical setting to determine whether or not a particular cancer patient is a candidate for such treatment with regards to the p53 status of the tumor. Once identified and characterized, novel NOS2 inhibitors may be administered to candidate cancer patients and evaluated in their ability to treat various tumors.

The described methods are the subject of U.S. provisional patent application, USSN 60/109,563, filed on November 23, 1998 by the Public Health Service on behalf of the Federal Government. Furthermore, the initial report and characterization of the invention is described in: Ambs *et al,* Nature Medicine (1998) vol. 4, no.12:1371–1376.

References

1. Nguyen *et al* (1992) PNAS 89:3030–3034.
2. Jenkins *et al* (1995) PNAS 92:4392–4396.
3. Thomsen *et al* (1995) Br. J. Cancer 72:41–44.
4. Ellie *et al* (1995) Neuroreport 7:294–296.
5. Ambs *et al* (1998) Cancer Res. 58:334–341.
6. Gallo *et al* (1998) J. Natl. Cancer Inst. 90:587–596.
7. Messmer *et al* (1996) Biochem J. 319:299–305.
8. Forrester, K. *et al* (1996) PNAS 93:2442–2447.
9. Calmels *et al* (1997) Cancer Res. 57:3365–3369.
10. Ambs *et al* (1997) Faseb J. 11:443–448.
11. Ambs *et al* (1998) PNAS 95:8823–8828.
12. Thomsen *et al* (1997) Cancer Res. 57:3300–3304.

Under the present proposal, the overall goal of the CRADA collaboration will involve the following:

1. Use of the genetically engineered cells lines and assays in preclinical screening assays of potential NOS2 inhibitors; and
2. Use of the cell lines and candidate NOS2 inhibitors in diagnostic, preclinical and clinical settings.

Party Contributiions:

The role of the NCI in the CRADA may include, but not be limited to:

1. Providing intellectual, scientific, and technical expertise and experience to the research project.
2. Providing the CRADA Collaborator with information and data relating to the methods developed to assess the activity of p53 and NOS2 and to screen for potential modulators of NOS2 activity.
3. Planning research studies and interpreting research results.
4. Carrying out research to validate the use of the NOS2-related methods and candidate NOS2 inhibitors in preclinical, diagnostic and clinical settings.
5. Publishing research results.
6. Developing additional potential applications of the methods.

The role of the CRADA Collaborator may include, but not be limited to:

1. Providing significant intellectual, scientific, and technical expertise or experience to the research project.
2. Planning research studies and interpreting research results.
3. Producing candidate NOS2 inhibitors under cGMP conditions in sufficient quantities to support the CRADA studies.
4. Carrying out research to validate the use of the NOS2-related methods and candidate NOS2 inhibitors in preclinical, diagnositc and clinical settings, including toxicologic and pharmacologic assays, as appropriate.
5. Providing technical and/or financial support to facilitate scientific goals and for futher design of applications of the technology outlined in the agreement.
6. Publishing research results.

Selection criteria for choosing the CRADA Collaborator may include, but not be limited to:

1. A demonstrated record of success in the screening of chemotherapeutic agents.
2. A demonstrated background and expertise in cancer research and treatment.
3. The ability to collaborate with NCI on further research and development of this technology. This ability will be demonstrated through experience and expertise in this or related areas of technology indicating the ability to contribute intellectually to ongoing research and development.
4. The demonstration of adequate resources to perform the research and development of this technology (*e.g.* facilities, personnel and expertise) and to accomplish objectives according to an appropriate timetable to be outlined in the CRADA Collaborator's proposal.
5. The willingness to commit best effort and demonstrated resources to the research and development of this technology, as outlined in the CRADA Collaborator's proposal.
6. The demonstration of expertise in the commercial development and production of products related to this area of technology.
7. The level of financial support the CRADA Collaborator will provide for CRADA-related Government activities.
8. The willingness to cooperate with the National Cancer Institute in the timely publication of research results.
9. The agreement to be bound by the appropriate DHHS regulations relating to human subjects and to all PHS policies relating to the use and care of laboratory animals.
10. The willingness to accept the legal provisions and language of the CRADA with only minor modifications, if any. These provisions govern the distribution of future patent rights to CRADA inventions. Generally, the rights of ownership are retained by the organization that is the employer of the inventor with (1) the grant of a license for research and other Government purposes to the Government when the CRADA Collaborator's employee is the sole inventor, or (2) the grant of an option to elect an exclusive or nonexclusive license to the CRADA Collaborator when the Government employee is the sole inventor.

Dated: October 8, 1999.

Kathleen Sybert,

Chief, Technology Development and Commercialization Branch, National Cancer Institute, National Institutes of Health.

[FR Doc. 99–32138 Filed 12–10–99; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice if hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 BM–1 01.

Date: December 7, 1999.

Time: 2:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 10, 1999.

Time: 11:30 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: David M. Monsees, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3199, MSC 7770, Bethesda, MD 20892, (301) 435–0684, monseesd@drg.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 16, 1999.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jay Cinque, MSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252.

This notice is being published less than 15 days prior to the meeting due the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 16, 1999.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Marcelina B. Powers, DVM, MS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7804, Bethesda, MD 20892, (301) 435–1720.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 20, 1999.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Marcelina B. Powers, DVM, MS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7804, Bethesda, Md. 20892, (301) 435–1720.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: December 21, 1999.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telepone Conference Call).

Contact Person: Marcelina B. Powers, DVM, MS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7804, Bethesda, MD 20892, (301) 435–1720.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 6, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–32137 Filed 12–10–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Changes to a Fiscal Year (FY) 1999 Funding Opportunities Notice

AGENCY: Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Modification/Clarification of a Notice of Funding Availability Regarding the Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) Community Treatment Program Funding Announcement.

SUMMARY: This notice is to inform the public that certain requirements/statements in the SAMHSA/CSAT Program Announcement 99–050 entitled, Comprehensive Community Treatment Program for the Development of New and Useful Knowledge (Short Title: Community Treatment Program), published in the **Federal Register** on March 8, 1999 (Volume 64, Number 44, pages 11027–11031) have been modified/clarified. It is, therefore, critical that potential applicants for the May 10, 2000 and future receipt dates for applications obtain a copy of the Addendum that contains the modified/clarified Purpose and Rationale, Eligibility, Availability of Funds, Period of Support and Program Description and Project Requirements sections for the Community Treatment Program announcement (PA 99–050) before preparing and/or submitting an application.

The full Program Announcement and the addendum that includes modified/clarified sections are available via the SAMHSA web site—www.samhsa.gov, or from the National Clearinghouse for Alcohol and Drug Information (Telephone: 800–729–6686).

Additional information about the modifications/clarifications and/or programmatic assistance may be obtained from: Thomas Edwards, Jr., Division of Practice and Systems Development, Center for Substance Abuse Treatment, SAMHSA, Rockwall II, Suite 740, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (301) 443–8453.

Dated: December 6, 1999.

Richard Kopanda,

Executive Office, Substance Abuse and Mental Health Services Administration.

Addendum to PA 99–050

December 1999

ADDENDUM to SAMHSA/CSAT Program Announcement PA 99–050, Comprehensive Community Treatment Program for the Development of New and Useful Knowledge

The following changes to the appended PA 99–050 modify/clarify the Purpose and Rationale, Eligibility, Availability of Funds, Period of Support, and Program Description and Project Requirements sections. It is important to note that potential applicants for the May 10, 2000 and future receipt dates must take the following modifications/clarifications into consideration before preparing and/or submitting an application.

Purpose and Rationale

(Replace the existing second sentence of the third paragraph with the following.)

Through this Program Announcement (PA), CSAT will support two types of grants: (1) Full studies of treatment programs and services, and (2) exploratory/pilot studies.

Note: CSAT will no longer support enhancement/expansion grants under this PA; therefore, all references to enhancement/expansion grants throughout the PA should be ignored.

Eligibility

(The second paragraph of the Eligibility section has been deleted.)

Note: The enhancement/expansion grant category will not be funded.

Availability of Funds

(Replace the existing Availability of Funds section with the following.)

It is estimated that $2.5 million will be available to support awards under this PA in FY 2000. The amount of an award is expected to range as follows (amounts include direct and indirect costs):

Full studies: up to $500,000;
Exploratory/Pilot studies: up to $250,000;

Funds will be divided between the two grant categories. The number of applications funded in each category will depend on the quality of applications as determined by the peer review process. Funds may be used to conduct all aspects of data collection and evaluation. Limited funds are available to support substance abuse treatment intervention services and substance abuse related services necessary for successful conduct of the proposed study. Applicants are strongly encouraged to verify future receipt dates and availability and terms of funding before preparing and submitting applications (see Application Receipt and Review Schedule).

Period of Support

(Replace the existing Period of Support section with the following.)

Support for full studies and for exploratory/pilot studies may be requested for up to 3 years. Annual awards will be made subject to continued availability of funds and progress achieved.

Section II—Program Description and Project Requirements, B. Program Plan, (3) Enhancement/Expansion Grants

(Section 3—Enhancement/Expansion Grants has been deleted.)

Note: The enhancement/expansion grant category will not be funded.

[FR Doc. 99–32102 Filed 12–10–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ET; NVN–62297]

Notice of Proposed Withdrawal and Intent to Prepare a Planning Amendment to the Lahontan Resource Management Plan; Nevada; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: This action corrects errors in the acreage and land descriptions in the notice published as FR Doc. 98–18016, 63 FR 36937–36940, July 8, 1998.

On page 36937, third column, between lines 12 and 13 from the bottom of the column, add ''Sec. 7, lots 9–12, inclusive;''.

On page 36937, second column, line 15 from the bottom of the column, which reads ''minerals from mining and 166,906. 28 acres'' is hereby corrected to read ''minerals from mining and 166,549.21 acres''.

On page 36939, column 1, line 7 which reads ''Sec. 21, lots 3 and 4, NE¼SW¼;'' is hereby corrected to read ''Sec. 21, lots 3 and 4, NW¼SW¼;''.

On page 36939, column 1, line 12, which reads ''NE¼SE¼, SW¼SE¼.'' is hereby corrected to read ''NE¼SE¼, SW¼SE¼, and all unpatented mining claims.''.

On page 36939, column 1, line 19, which reads ''SW¼NW¼, E½SW¼, SE¼;'' is hereby corrected to read ''SE¼NW¼, E½SW¼, SE¼;''.

On page 36939, column 1, line 44, which reads ''Sec. 6, lots 1–7, inclusive, E½, E½W½;'' is hereby corrected to read ''Sec. lots 1–7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, SE¼;''.

On page 36939, column 1, line 9 from the bottom of the column, which reads ''N½N½, and all unpatented mining'' is hereby corrected to read ''W½E½, N½NW¼, and all unpatented mining''.

On page 36939, column 2, line 19, which reads ''E½NW¼SW¼SW¼,'' is hereby corrected to read ''E½NE¼SW¼SW¼,''.

On page 36939, column 2, line 18 from the bottom of the column, which reads ''Sec. 17, NE¼, E½NW¼, S½, (excluding'' is hereby corrected to read ''Sec. 17, NE¼, E½, NW¼, SE¼, (excluding''.

On page 36939, column 3, lines 25 and 26, which read ''T. 22 N., R. 22 E., Sec. 1, lots 1–3, inclusive, S½.'' are hereby deleted from the notice as these are Indian Trust lands.

On page 36939, column 3, line 42, which reads ''The area described aggregates 166,906.28'' is hereby corrected to read ''The area described aggregates 166,549.21''.

Dated: December 2, 1999.

Jim Stobaugh,

Land Team Lead.

[FR Doc. 99–32217 Filed 12–10–99; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

National Park Service

Sleeping Bear Dunes National Lakeshore

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of the Draft Historic Properties Management Plan/Draft Environmental Impact Statement for Sleeping Bear Dunes National Lakeshore, Benzie and Leelanau Counties, Michigan.

SUMMARY: Pursuant to section 102(2) of the National Environmental Policy Act of 1969, the National Park Service announces the availability of the Draft Historic Properties Management Plan/Draft Environmental Impact Statement (DHPMP/DEIS) for Sleeping Bear Dunes National Lakeshore.

The DHPMP/DEIS describes and analyzes three alternative future directions for the management of selected historic properties within Sleeping Bear Dunes National Lakeshore. The alternatives were based on the Lakeshore's enabling legislation and recent investigations into the significance of historic properties in the Lakeshore. The DHPMP/DEIS is intended to provide a blueprint to guide park management decisions regarding these historic properties for the next 10–20 years. The DHPMP/DEIS is a conceptual document that establishes and articulates a management philosophy and framework for decision making and problem solving. Since partners would implement many preservation and adaptive use activities, this plan will function as a guide for both the National Park Service and potential partners.

Alternative I is the no-action alternative. It provides a baseline for comparison of the other alternatives. Each of the action alternatives would strive to achieve all desired conditions for the Lakeshore relating to select historic properties. The primary difference between the two action alternatives is their central emphasis. Alternative II would emphasize preservation of the exteriors of structures, through partnership agreements, with no adaptive uses by partners. The Preferred Alternative (Proposed Action), Alternative III, would emphasize the rehabilitation and adaptive use of historic structures through partnership agreements. It would also permit limited compatible uses of cultural landscapes. Under all alternatives, the National Park Service may adapt historic structures for its use.

DATES: There will be a 60-day public review period for comments on this document. Comments on the DHPMP/DEIS must be received no later than February 15, 2000.

ADDRESSES: If you wish to comment, you may submit your comment by any one of several methods. You may mail comments to Superintendent, Sleeping Bear Dunes National Lakeshore, 9922 Front Street, Empire, Michigan 49630. You also may comment via e-mail to slbe__hpmp@nps.gov. If you attach a file to your e-mail, please ensure the file is in ASCII format avoiding the use of

special characters and any form of encryption. Please also include your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact the plan coordinator, Michael Duwe, directly at (231) 326–5134, ext. 502. Finally, you may hand-deliver comments to the Sleeping Bear Dunes National Lakeshore headquarters at the address above. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identify, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Superintendent, Sleeping Bear Dunes National Lakeshore, at the address and telephone listed above.

Dated: December 3, 1999.

William W. Schenk,

Regional Director, Midwest Region.

[FR Doc. 99–32158 Filed 12–10–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Winter Use Plan, Draft Environmental Impact Statement for the Yellowstone and Grand Teton National Parks and John D. Rockefeller, Jr., Memorial Parkway, Wyoming

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of extension of time for review of draft environmental impact statement (DEIS).

SUMMARY: The National Park Service is extending the public review period to December 15, 1999 for the DEIS for the Winter Use Plan for the Yellowstone and Grand Teton National Parks and John D. Rockefeller, Jr., Memorial Parkway, Wyoming. The notice of availability for the DEIS was published in the **Federal Register** on October 1, 1999 (64 FR 53379). The public review period was originally to end on November 15, 1999 and was extended for the first time to end on December 1, 1999.

DATES: Public comments on the DEIS should be submitted on or before December 15, 1999.

ADDRESSES: Comments on the Winter Use Plan, Draft Environmental Impact Statement for the Yellowstone and Grand Teton National Parks and John D. Rockefeller, Jr., Memorial Parkway should be sent by writing: Clifford Hawkes, National Park Service, Denver Service Center, 12795 West Alameda Parkway, Lakewood, Colorado 80228; by e-mail at: yell__writer__use@nps.gov; or by calling (307) 344–2500 (this is not a toll-free number). Public reading copies of the plan are available on the Internet (www.nps.gov/yell/technical/planning/) and will be available for review at the following locations:

Office of the Superintendent, National Park Service, PO Box 168, Yellowstone National Park, Wyoming 82190, Telephone: (307) 344–2002

Office of the Superintendent, National Park Service, Grand Teton National Park, PO Drawer 170, Moose, Wyoming 83012, Phone (307) 739–3410

Clifford Hawkes, National Park Service, Denver Service Center, 12795 W. Alameda Parkway, Lakewood, CO 80228, Telephone: (303) 969–2262

Office of Public Affairs, National Park Service, Department of Interior, 18th and C Streets NW, Washington, DC 20240, Telephone: (202) 208–6843

FOR FURTHER INFORMATION: Contact Clifford Hawkes, National Park Service, Denver Service Center, 12795 West Alameda Parkway, Lakewood, Colorado 80228.

Dated: December 3, 1999.

Clifford L. Hawkes,

Job Captain, Denver Service Center, National Park Service.

[FR Doc. 99–32156 Filed 12–10–99; 8:45 am]

BILLING CODE 4310–70–U

DEPARTMENT OF THE INTERIOR

Pictured Rocks National Lakeshore

AGENCY: National Park Service, Interior.

ACTION: Notice of Intent to prepare a Wilderness Suitability Study and Environmental Impact Statement for Pictured Rocks National Lakeshore, Michigan.

SUMMARY: The National Park Service (NPS) will prepare a wilderness suitability study to evaluate portions of Pictured Rocks National Lakeshore for possible designation as wilderness. The study will be included as part of a General Management Plan (GMP), currently in preparation. A notice of intent to prepare an Environmental Impact Statement with that GMP was published in the **Federal Register** of August 5, 1999 (64 FR 42713). That environmental impact statement now will be expanded to include an evaluation of the impacts associated with possible designation of wilderness within the lakeshore. This notice is being furnished as required by National Environmental Policy Act regulations 40 CFR 1501.7.

To facilitate sound planning and analysis of environmental impact, the NPS is gathering information necessary for the preparation of the GMP, the wilderness suitability study, and the Associated Environmental Impact Statement and is obtaining suggestions and information from other agencies and the public on the scope of issues to be addressed. Comments and participation in this scoping process are invited.

ADDRESSES: Written comments and information concerning the scope of the EIS and other matters, or requests to be added to the project mailing list should be directed to: Mr. Grant Petersen, Superintendent, Pictured Rocks National Lakeshore, P.O. Box 40, Munising, Michigan 49862. Telephone: 906–387–2607. E-mail: piro__superintendent@nps.gov

FOR FURTHER INFORMATION CONTACT: Superintendent, Pictured Rocks National Lakeshore, at the address and telephone number above.

SUPPLEMENTARY INFORMATION: Persons who previously submitted comments on the scope of the EIS as it relates to the GMP need not resubmit those comments. The NPS already is considering that input as planning continues. However, persons who have not previously submitted comments on the scope of the EIS, or who wish to submit additional comments related to the scope of the EIS in consideration of the wilderness suitability study are encouraged to do so.

The NPS is publishing newsletters about the GMP process, with ''General Management Plan, Issue 1'' having been released during the summer of 1999. Subsequent newsletters will include discussions of planning to-date, on the wilderness suitability study being prepared with the GMP, and will provide a response form whereby the public can provide additional input to the planning process. Copies of the

newsletters can be requested from the address or telephone number listed above. Current information regarding this planning, as well as an electronically transmittable comment form, can be found on the park's web site, http://www.nps.gov/piro

The environmental review of the GMP, Wilderness Study and EIS for the lakeshore will be conducted in accordance with requirements of the NEPA (42 U.S.C. 4371 *et seq.*), NEPA regulations (40 CFR 1500–1508), other appropriate Federal regulations, and NPS procedures and policies for compliance with those regulations.

Dated: December 13, 1999.

William W. Schenk,

Regional Director.

[FR Doc. 99–32157 Filed 12–10–99; 8:45 am]

BILLING CODE 4310–70–U

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 4, 1999. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by December 28, 1999.

Carol D. Shull,

Keeper of the National Register.

Connecticut

Hartford County

Broad Street Green Historic District, Roughly along Broad St., from Batchelder Rd. to Union St., Windsor, 99001613

Massachusetts

Suffolk County

Church Green Buildings Historic District, 101–113 Summer St., Boston, 99001614

Mississippi

Issaquena County

Railroad Section Foreman's House, No. 3 Railroad Rd., Valley Park, 99001615

Missouri

St. Louis Independent City

Dickmann Building, 3115 S. Grand Blvd., Saint Louis, 99001616

Willys—Overland Building, 2300 Locust St., Saint Louis, 99001617

North Carolina

Chatham County

Bray, Cadmus N., House, 229 W. Second St., Siler City, 99001620

Durham County

Bright Leaf Historic District (Durham MRA) Roughly bounded by W. Peabody St., Duke St., Minerva Ave., N&W RR, Corporation St., Ligget St., Morris St. and W. Loop, Durham, 99001619

Forsyth County

Atkins High School (former), 1215 N. Cameron Ave., Winston-Salem, 99001618

Tennessee

Roane County

Rockwood Post Office, 311 Mill St., Rockwood, 99001621

Texas

Gray County

Central Fire Station, 203 W. Foster, Pampa, 99001623

Combs-Worley Building, 120 W. Kingsmille, Pampa, 99001625

Pampa City Hall, 200 W. Foster, Pampa, 99001622

Tarrant County

Riverside Public School, 2629 LaSalle St., Fort Worth, 99001624

Utah

Utah County

Adams, George and Temperance, House (Orem, Utah MPS), 196 West 400 South, Orem, 99001628

Christeele Acres Historic District (Orem, Utah MPS) Roughly bounded by State St., 900 South, 450 East, and 1010 South, Orem, 99001626

Jensen, Lars and Agnes, House (Orem, Utah MPS) 87 North 800 West, Orem, 99001627

Washburn, Alvin and Grace, House (Orem, Utah MPS) 753 North 100 West, Orem, 99001629

Vermont

Grand Isle County

Rutland Railroad Pumping Station, 43 Lake St., Alburg, 99001630

Washington

Spokane County

West Downtown Historic Transportation Corridor (Single Room Occupancy Hotel's in the Central Business District of Spokane MPS), Roughly bounded 2nd Ave., Maple St., Sprague Ave., and Howard St., Spokane, 99001631

Wisconsin

Brown County

Chicago and North Western Railway Passenger Depot, 202 Dousman St., Green Bay, 99001633

Milwaukee County

Joseph Schiltz Company Brewery Complex, 219 W. Galena St., Milwaukee, 99001632

There was a technical error on the 11/24/99 pending list. The item should read as follows:

New York

New York County

Kehila Kedosha Janina Synagogue 280 Broom St.
New York, 99001430

[FR Doc. 99–32147 Filed 12–10–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Availability of Plan of Operations and Environmental Assessment Phase II—3D Seismic Operation; Western Geophysical Company, Padre Island National Seashore, Kleberg County, Tx

Notice is hereby given in accordance with Section 9.52(b) of Title 36 of the Code of Federal Regulations that the National Park Service has received from Western Geophysical Company a Plan of Operations for the Phase II—3D seismic operation within Padre Island National Seashore, in Kleberg County, Texas.

The Plan of Operations and Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice in the Office of the Superintendent, Padre Island National Seashore, 20301 Park Road 22, Corpus Christi, Texas. Copies are available from the Superintendent, Padre Island National Seashore, Post Office Box 181300, Corpus Christi, Texas 78480–1300, and will be sent upon request.

If you wish to comment, you may submit your comments by mailing them to the post office address provided above, or, you may hand-deliver comments to the park at the street address provided above. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the decisionmaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the decisionmaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of

organizations or businesses, available for public inspection in their entirety.

Dated: November 23, 1999.

Betty W. Frantum,

Acting Superintendent, Padre Island National Seashore.

[FR Doc. 99–31750 Filed 12–13–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA–188N]

Contingency Plans for Year 2000

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice; Guidance.

SUMMARY: In light of the possibility that computer or operational difficulties may arise due to the transition to the year 2000, the Drug Enforcement Administration (DEA) is detailing its contingency plans for the Year 2000. In consultation with the regulated chemical and pharmaceutical industries, DEA has prepared these plans to ensure a smooth transition to the new millennium.

FOR FURTHER INFORMATION CONTACT: Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Washington, D.C. 20537, (202) 307–7297.

SUPPLEMENTARY INFORMATION:

What Is the Purpose of This Notice?

This notice makes public the Drug Enforcement Administration's (DEA's) business continuity and contingency plans to deal with any computer or operational difficulties which may result from Year 2000 (Y2K) problems.

Background

Concerns have arisen within both the public and private sectors as to possible computer or operational problems which might occur due to the use of two-digit date fields in computer files as dates change from December 31, 1999 to January 1, 2000. Functionality of key systems, including telephones, power and other utilities, as well as computer-based business functionality have been questioned. Much discussion has occurred as to the types of problems which might be encountered and the best contingency plans available to deal with them should they arise.

DEA undertook a thorough review of its systems to determine where problems might exist and to work proactively, both internally and externally, to ensure that the regulated industries are prepared for 2000.

What Steps Has DEA Taken To Prepare for the Possibility of Problems?

In order to prepare for the possibility that problems might arise, either internally or externally, DEA has developed a business continuity and contingency plan to have in place back-up systems, where necessary, to deal with problems, should they arise.

Registration and Reregistration

Many registrant services are computer-based. While all efforts have been made to ensure that DEA's registration systems are unaffected, as a contingency against interruption of controlled substance registration service, DEA has taken a number of precautionary steps:

1. All renewal applications that would normally be printed in January, February, and March 2000, have been preprinted. Matching certificates of registration have also been preprinted. the forms and certificates will be manually sent to registrants.
2. Until computer-generated certificates can be issued, form letters will be provided to new registrations to serve as proof of registration.
3. Until computer generated certificates can be issued, form letters will also be provided to registrants requiring modification of their registration.

Quotas for the Manufacture of Controlled Substances

Concerns have been expressed that there may be some stockpiling of controlled substances by patients worried about the availability of controlled substances. This stockpiling, should it occur, could result in shortages of controlled substances for patients in the early part of 2000. In an effort to ensure that any stockpiling does not strain the controlled substances system, and to ensure that manufacturers and distributors of controlled substances do not experience shortages of raw materials, DEA has adjusted the aggregate production quotas to include the allowable maximum of 50 percent inventories for each basic class of controlled substances manufactured for legitimate medical use (64 FR 56366; October 19, 1999).

Automation of Reports and Consolidated Orders System

The Automation of Reports and Consolidated Orders System (ARCOS) is the automated system used by DEA to monitor selected controlled substances inventories and transactions. All registrants required to submit ARCOS reports should do so under the normal schedule of reporting. If there are interruptions in the computer system, the ARCOS Unit of DEA will collect the reports and catalog them into a library until such time as they can be entered into the computer system.

Importation and Exportation of Controlled Substances

Many countries, including the United States, use import/export permits which expire on December 31 of each calendar year, mainly due to annual United Nations reporting requirements. Therefore, as a matter of routine, there is a large influx of applications for import and export permits submitted to DEA during the last week of November and the first two weeks of December of each calendar year in the hopes of meeting the December 31 deadline. Registrants should coordinate with their foreign importer or exporter as much as possible so that they receive the import or export authorization as soon as possible. Registrants should make every attempt to submit their application and supporting documents as early as possible. If, after January 1, 2000, Y2K problems exist, DEA will implement measures to assist registrants in working through the international authorities. If a problem exists, registrants should contact the International Drug Unit, Office of Diversion Control, Drug Enforcement Administration at (202) 307–4747.

Unlike the permit process, import/export declarations (DEA form 236) will not be overly impacted by Y2K issues, should they occur, since registrants are not dependent upon DEA to take any action prior to an import or export of controlled substances pursuant to an import/export declaration. However, if the situation arises, DEA will take similar actions as set forth for the import and export permits describes above.

Chemicals

There are four major functions associated with the chemical control program which could be impacted by Y2K: import/export declarations from the chemical industry, registration of chemical handlers, transmission of letters to no objection, and the transmission of multilateral notifications to other governments. Outlines below are the contingencies associated with each area.

Import/export (DEA form 486): Industry should not submit import/export declarations (DEA form 486) in the days immediately preceding and following January 1, 2000. For

shipments scheduled to depart near the year end, the industry should file their DEA form 486 as far as possible prior to January 1, 2000. Many forms are submitted to DEA through the use of facsimile transmission. Should this technology be unavailable to DEA or industry, industry should overnight mail the forms to DEA. Forms should be sent to: Drug Enforcement Administration Headquarters, ATTN.: ODIA—Chemical import/export Declaration, 2401 Jefferson Davis Highway, Alexandria, VA 22301.

Processing of registration applications: DEA has discussed previously in this notice steps which are being taken to process controlled substances registrations and reregisterations. The process of chemical registrations will be accomplished in the same manner as the processing of controlled substances registrations.

Transmission of letters of no objection: Transmissions of letters of no objection to industry is normally accomplished through facsimile. If this method of transmission is unavailable to DEA, letters will be sent through the regular mail system.

Transmission of multilateral notifications to other governments: Normally, multilateral notifications to other governments are sent by facsimile. If this method of transmission is unavailable to DEA, only urgent notifications will be addressed and express mailed to overseas DEA offices.

Delegation of Authority

It is impossible to anticipate every potential problem which might occur within the regulated industries as a result of Y2K. As part of its plans to deal with such problems, DEA is considering the possibility of having certain authorities presently delegated to the Deputy Assistant Administrator, Office of Diversion Control, temporarily delegated to field managers. DEA's goal is to ensure that registrants and regulated persons have a means of contacting DEA if exigent circumstances related to Y2K require the waiver of regulatory requirements. If DEA determines that this action is appropriate, it will publish a separate rule in the Federal Register delegating these authorities.

What Has the DEA Done To Work With Industry To Proactively Address Y2K Concerns?

In July 1999, DEA sent a letter to the regulated industries detailing its contingency plans and requesting feedback regarding concerns or foreseen difficulties. Responses received indicated that no problems were foreseen. Further, in its direct contacts with the regulated industries, DEA has been assured that they are fully aware of the potential for Y2K problems and are actively working to ensure that they will not be impacted by these potential difficulties.

What Does DEA Recommend to Registrants as Contingencies To Prepare for Y2K?

In an effort to prevent problems from occurring, DEA wishes to offer suggestions to registrants to prepare for Y2K.

Registrants who use fairly substantial numbers of order forms should take steps to ensure that they have an adequate supply on hand. DEA's Registration Unit contacted the high volume order form users directly to ensure extra order forms were requested. If a registrant has not been contacted, and desires additional order forms, the registrant should contact the Registration Unit of DEA at (800) 882–9539.

Pharmacies maintaining prescription refill information electronically may wish to create a hard copy backup of this information shortly before the new year. This would allow these pharmacies to have hard copy information on hand regarding all prescriptions pending refills in the event that problems arise, and to guard against the possibility of diversion through multiple prescription filling or filling of prescriptions for which refill orders do not exist.

Registrants using alarm systems to secure their controlled substances are advised to be aware of telephone and computer problems related to the companies administering those alarm systems. DEA suggests that these registrants have contingency plans in place with security companies so that, should difficulties with automated alarm systems arise, alternate nonautomated physical security plans are in place and immediately available for the registrant's use.

Conclusion

It is hoped that the contingency plan DEA has outlined here, along with the preparedness measures the regulated industries have already taken, will create a seamless, trouble-free, transition to the year 2000. However, if further concerns arise, regulated persons, registrants and other interested parties are encouraged to contact the Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7297.

Dated: December 6, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 99–32101 Filed 12–10–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP(NIJ)–1257]

RIN 1121–ZB91

National Institute of Justice Announcement of the Eighth Meeting of the National Commission on the Future of DNA Evidence

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of meeting.

SUMMARY: Announcement of the eighth meeting of the National Commission on the Future of DNA Evidence.

SUPPLEMENTARY INFORMATION: The eighth meeting of the National Commission on the Future of DNA Evidence will take place beginning on Sunday, January 16, 2000, 1:00 PM–5:00 PM Eastern Daylight Time and will continue on Monday, January 17, 2000, 9:00 AM–5:00 PM Eastern Daylight Time. The meeting will take place at the Hotel Madison, located at 1177 15th St NW, Washington, DC. Phone: (202) 862–1600.

The National Commission on the Future of DNA Evidence, established pursuant to Section 3(2)A of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, will meet to carry out its advisory functions under Sections 201–202 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended. This meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: Christopher H. Asplen, AUSA, Executive Director (202) 616–8123.

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, Sections 201–203, as amended, 42 U.S.C. 3721–23 (1994).

Background

The purpose of the National Commission on the Future of DNA Evidence is to provide the Attorney General with recommendations on the use of current and future DNA methods, applications and technologies in the operation of the criminal justice system, from the Crime scene to the courtroom. Over the course of its Charter, the Commission will review critical policy

issues regarding DNA evidence and provide recommended courses of action to improve its use as a tool of investigation and adjudication in criminal cases.

The Commission will address issues in five specific areas: (1) the use of DNA in postconviction relief cases, (2) legal concerns including *Daubert* challenges and the scope of discovery in DNA cases, (3)criteria for training and technical assistance for criminal justice professionals involved in the identification, collection and preservation of DNA evidence at the crime scene, (4)essential laboratory capabilities in the face of emerging technologies, and (5) the impact of future technological developments in the use of DNA in the criminal justice system. Each topic will be the focus of the in-depth analysis by separate working groups comprised of prominent professionals who will report back to the Commission.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 99–32113 Filed 12–18–99; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

December 7, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 219–5096 ext. 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- 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 collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Title: Experience Rating Report.

OMB Number: 1205–0164.

Frequency: Annually.

Affected Public: State, Local, or Tribal govt.

Number of Respondents: 53.

Estimated Time Per respondent: 15 minutes.

Total Burden Hours: 14.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The ETA 204 provides data to ETA for the study of seasonality, employment or payroll fluctuations, and stabilization, expansion or contraction in operations on employment experience. The data are used to provide an indication of whether solvency problems exist in the State's Trust Fund accounts and in analyzing factors which give rise to solvency problems.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–32197 Filed 12–10–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

December 6, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ({202} 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OHSA, and VETS contact Darrin King ({202} 219–5096 ext. 151 or by E-Mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OHSA, and VETS, contact Darrin King ({202} 219–5096, ext. 151 or by E-Mail King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503, ({202} 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- 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 collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Title: 2000 NLSY97 School Survey.

OMB Number: 1220–ONEW.

Frequency: Every 4 years.

Affected Public: Not-for-profit institutions.

Number of Respondents: 7,981.

Estimated Time Per respondent: 30 minutes.

Total Burden Hours: 3,991.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The 2000 NLSY97 School Survey will provide data on the high school characteristics of youths

surveyed in the National Longitudinal Survey of Youth 1997. The data will enhance the understanding of the antecedents of youths critical employment decisions as well as provide profiles of School-To-Work programs in the surveyed high schools. Principals in approximately 8,000 high schools, including vocational education schools, will be asked to complete questionnaires.

Ira L. Mills,

Department Clearance Officer.

[FR Doc. 99–32198 Filed 12–10–99; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

December 6, 1999.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OHSA, and VETS contact Darrin King ((202) 219–5096 ext. 151 or by E-mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility:
- 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 collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Title: OSHA Data Collection System.

OMB Number: 1218–0209.

Frequency: Annually.

Affected Public: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 81,825.

Estimated Time Per respondent: 30 minutes.

Total Burden Hours: 35,913.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The year 2000 OSHA Data Collection will request 1999 injury and illness data from 81,825 establishments throughout the Nation. The data are needed by OSHA to carry out intervention and enforcement activities to guarantee workers a safe and healthful workplace. The data will also be used for measurement purposes in compliance with the Government Performance and Results Act of 1995 and multiple research purposes. The data collected are already maintained by employers as required by 29 CFR part 1904.

Agency: Employment and Training Administration.

Title: Unemployment Compensation for Ex-Servicepersons (UCX) Handbook.

OMB Number: 1205–0176.

Agency Numbers: ETA 841 and 843.

Form #	Affected public	Respondents	Frequency	Average time per response (min.)	Total hours
ETA 841	State, Local or Tribal Government	66,126	One-time	1.5	1,653
ETA 843	State, Local or Tribal Government	3,306	One-time	1	55

Number of Respondents: 66,126.

Estimated Time Per respondent: 1.5 minutes.

Total Burden Hours: 1,708.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: Federal Law (5 U.S.C. 8521 et seq.) Provides unemployment insurance protection, to former members of the Armed Forces (ex-servicepersons) and is referred to in abbreviated form as ''UCX.'' The forms in Chapter V through VII of the UCX Handbook are used in connection with the provisions of this benefit assistance.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–32199 Filed 12–10–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Hearing Conservation Plans

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 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 and 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 Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to Hearing Conservation Plans.

DATES: Submit comments on or before February 11, 2000.

ADDRESSES: Send comments to Diane B. Hill, Program Analysis Officer, Office of Program Evaluation and Information Resources, 4015 Wilson Boulevard, Room 627, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via E-mail to dhill@msha.gov, along with an original printed copy. Ms. Hill can be reached at (703) 235–1470 (voice) or (703) 235–1563 (facsimile).

FOR FURTHER INFORMATION CONTACT: A copy of the proposed information collection request can be obtained by contacting Diane B. Hill, Program Analysis Officer, Office of Program Evaluation and Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 719, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Ms. Hill can be reached at dhill@msha.gov (Internet E-mail), (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 206 of the Federal Mine Safety and Health Act of 1977 authorize the recordkeeping and reporting requirements implemented under 30 CFR 70.510 and 71.805—Noise Standards.

Each operator of a coal mine who has received a notice of violation for noise levels in excess of the permissible standard, is required to submit to MSHA for approval, a continuing, effective hearing conservation plan. This plan must contain methods of reducing environmental noise levels; provisions for personal protective devices to be available to affected miners; and provisions for pre-employment and periodic audiograms.

II. Desired Focus of Comments

MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- 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 collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

MSHA seeks to continue the frequency of collection in order for the Agency to properly assess the effectiveness of the plan, and monitor the safety and health conditions in today's mining environment.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Hearing Conservation Plan.

OMB Number: 1219–0017.

Affected Public: Business or other.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response (hours)	Burden hours
70.510(b) (Plans)	11	Annually	11	6	66
	82	Annually	82	4	328
70.510(b)(iii) (audio tests)	11	Annually	55	1	55
	74	Biennially	185	1	185
71.805(b) (Plans)	12	Annually	12	6	72
	153	Annually	153	4	612
71.805(b)(iii) (audio tests)	12	Annually	60	1	60
	138	Biennially	345	1	345
Totals	235		903	1.91	1,723

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $29,670.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of this information collection request; they will also become a matter of public record.

Dated: December 6, 1999.

George M. Fesak,

Director, Program Evaluation and Information Resources.

[FR Doc. 99–32196 Filed 12–10–99; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–1–99]

Curtis-Straus LLC., Application for Recognition

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice.

SUMMARY: This notice announces the application of Curtis-Straus LLC. for recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding. This preliminary finding does not constitute an interim or temporary approval of this application.

DATES: Comments submitted by interested parties must be received no later than February 11, 2000.

ADDRESS: Send comments concerning this notice to: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3653, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, at the above address, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice that Curtis-Straus LLC. (CSL) has applied for recognition as a Nationally

Recognized Testing Laboratory (NRTL) for testing and certification of the equipment or materials and using the site, listed below. CSL has also requested recognition to use certain supplemental programs. OSHA recognizes an organization as an NRTL, and processes applications related to such recognitions, following requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Appendix A to this section requires that OSHA publish this notice of the preliminary finding on an application.

The current address of the laboratory covered by this application is: Curtis-Straus LLC., 527 Great Road, Littleton, Massachusetts 01460.

Background

According to the application, Curtis-Straus LLC. (CSL) is a limited liability company chartered in the Commonwealth of Massachusetts and was established in 1996. CSL states that it offers testing services in electrical safety and in a number of other areas. The applicant also states that its founders and managers have, in the aggregate, over thirty years of technical experience in these areas. The application indicates that CSL is privately owned.

CSL submitted an application for recognition, dated February 9, 1998 (see Exhibit 2A). In response to requests from OSHA for clarification and additional information, CSL amended its application in submissions dated June 24, 1998, and August 9, 1999 (see Exhibits 2B and 2C). Some documents in these submissions, and part of the original application, have been withheld from disclosure under Exemption 4 of the Freedom of Information Act (FOIA). Staff of the NRTL Program performed an on-site assessment (review) of the Littleton, Massachusetts, facility on October 26–29, 1998. In the on-site review report, the program staff recommended a ''positive finding.''

Regarding the merits of the application, the applicant has presented documentation that describes how it will operate as an NRTL. However, it is an organization that, to date, has not operated a product certification program and CSL only recently developed the documents for the certification phase of its planned NRTL operations. Most of the detailed procedures the applicant plans to follow are contained in its Standard Operating Procedures Manual (SOPM), which is one of the documents that has been withheld from disclosure under FOIA.

The four recognition requirements of 29 CFR 1910.7 are presented below, along with examples that illustrate how CSL has met or plans to meet each of these requirements.

Capability

Section 1910.7(b)(1) states that for each specified item of equipment or material to be listed, labeled or accepted, the laboratory must have the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform appropriate testing.

The on-site review report indicates that CSL has adequate testing equipment and an adequate facility to perform the tests required under the test standards for which it seeks recognition. Security measures are in place to restrict or control access to their facility, and procedures exist on handling of test samples. The report also indicates that testing and processing procedures are in place, although some were in the process of review and update. CSL has only recently developed the testing procedures for the standards for which it seeks recognition. It utilizes outside calibration sources and has developed procedures for internal calibrations of certain equipment. The application indicates that CSL maintains records on testing equipment, which include information on repair, routine maintenance, and calibrations. The application and on-site review report address personnel qualifications and training, and identify CSL staff involved with product testing, along with a summary of their education and experience. Also, the report indicates that CSL personnel have adequate technical knowledge for the work they perform. Moreover, the review report indicates that the Quality System Manual (QSM) and SOPM are the primary documents for the CSL quality assurance activities. The application contains the procedures CSL will utilize for conducting the internal audits of its operations.

The application indicates that CSL has not tested products to all requirements of a test standard, and as already mentioned, CSL has just developed many of the procedures it will utilize to do such testing. Therefore, OSHA has not yet evaluated the actual use of the testing and reporting procedures that CSL will utilize for purposes of certifying to a complete test standard, and OSHA needs to investigate this aspect of CSL's operations when these procedures are in use. Accordingly, OSHA plans to include a condition in the recognition notice to provide the Agency with the opportunity to make this evaluation.

Control Procedures

Section 1910.7(b)(2) requires that the NRTL provide certain controls and services, to the extent necessary, for the particular equipment or material to be listed, labeled, or accepted. They include control procedures for identifying the listed or labeled equipment or materials, inspections of production runs at factories to assure conformance with test standards, and field inspections to monitor and assure the proper use of identifying marks or labels.

The applicant has developed procedures and related documentation for initially qualifying a manufacturer under the CSL certification program and for performing the required follow-up inspections at a manufacturer's facility. CSL has stated in its SOPM that it will perform follow-up ''factory inspections at least four times per year.'' These inspections will be one part of the activities that the applicant will utilize in controlling its certification mark. In its application, CSL included evidence of its application for registration of its certification mark with the U.S. Trademark and Patent Office (USPTO). The USPTO has issued a notice of allowance for this mark.

According to the on-site review report, CSL has not had a product certification program prior to applying for recognition as an OSHA NRTL. Staff of the NRTL Program reviewed a number of documents during the on-site visit that described the approach CSL would take in operating its program. After the visit, CSL finalized more detailed procedures, previously mentioned, for qualification and follow-up inspection of the manufacturer. CSL also presented procedures to establish and modify a ''listing'' of products it has certified and to control its mark on these products. Since CSL has just developed its NRTL follow-up program, and has not listed or labeled any products under these procedures, OSHA has been unable to evaluate the actual use of CSL's product certification program. The condition, mentioned above, that OSHA plans to include would also provide the Agency with the opportunity to make this evaluation. In addition, OSHA is concerned about the adequacy of CSL's proposed procedures to control its certification mark. As a result, OSHA plans to impose another condition to ensure that CSL will adequately control its mark.

Independence

Section 1910.7(b)(3) requires that the NRTL be completely independent of employers subject to the tested equipment requirements, and of any manufacturers or vendors of equipment or materials being tested for these purposes.

In its original application, CSL has stated that there is ''no ownership of Curtis-Straus by (organizations that are) manufacturers or suppliers of products or components to be tested or certified.'' The applicant also states that none of its owners ''works for, or has ownership of, or significant interest in'' any such organization. More recently, CSL provided a more comprehensive statement of its independence from ''suppliers'' (i.e., a manufacturer or distributor) and ''major users'' (i.e., employers that make major use) of any products that must be certified by an NRTL. The applicant also states that its ''conflict of interest policies are in place and . . . conflict of interest statements are signed by all personnel.''

Creditable Reports/Complaint Handling

Section 1910.7(b)(4) provides that an NRTL must maintain effective procedures for producing credible findings and reports that are objective and without bias, as well as for handling complaints and disputes under a fair and reasonable system.

As previously stated, CSL has only recently developed the procedures it will utilize in testing and certifying products. This includes the procedures for evaluating and reporting the findings for its initial or follow-up testing of products to ensure they conform to all requirements of a test standard. The applicant did include examples of the kind of reports it will generate. However, as in the case of the testing procedures, the evaluation and reporting procedures are new to CSL, and OSHA would need to evaluate them when the applicant uses them for its NRTL operations. Regarding the handling of complaints and disputes, the applicant'' SOPM contains the details on how it will handle a complaint it receives from its clients or from the public.

Standards

CSL seeks recognition for testing and certification of products to determine compliance with the following five (5) test standards, and OSHA has determined the standards are ''appropriate,'' within the meaning of 29 CFR 1910.7(c):

ANSI/UL 1459 Telephone Equipment

ANSI/UL 1950 Information Technology Equipment Including Electrical Business Equipment

UL 2601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety

UL 3101–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements

UL 3111–1 Electrical Measuring and Test Equipment, Part 1: General Requirements

The designations and titles of the above test standards were current at the time of the preparation of this notice.

Programs and Procedures

Curtis-Straus also seeks to use the supplemental programs listed below, based upon the criteria detailed in the March 9, 1995 **Federal Register** notice (60 FR 12980, 3/9/95). This notice lists nine (9) programs and procedures (collectively, programs), eight of which (called supplemental programs) an NRTL may use to control and audit, but not actually to generate, the data relied upon for product certification. An NRTL's initial recognition always includes the first or basic program, which requires that all product testing and evaluation be performed in-house by the NRTL that will certify the product. The on-site review report indicates that CSL appears to meet the criteria for use of the following supplemental programs for which it has applied:

Program 8: Acceptance of product evaluations from organizations that function as part of the International Electrotechnical Commission Certification Body (IEC–CB) Scheme.

Program 9: Acceptance of services other than testing or evaluation performed by subcontractors or agents. (Limitation—recognition covers equipment calibration and maintenance services only.)

CSL does not plan to use Program 9 for purposes of conducting its follow-up inspections, which is permitted under this program. Accordingly, the Agency plans to include the limitation on the use of Program 9, shown above.

OSHA developed the program descriptions to limit how an NRTL may perform certain aspects of its work and to permit the activities covered under the programs only when the NRTL meets certain criteria. In this sense, they are special conditions that the Agency places on an NRTL's recognition. OSHA does not consider these programs in determining whether an NRTL meets the requirements for recognition under 29 CFR 1910.7. However, OSHA does treat these programs as one of the three elements that defines an NRTL's scope of recognition.

CSL also sought recognition for two other programs, one of which it withdrew from consideration. OSHA is not granting recognition for the other program at this time. Under this program, an NRTL may use others in performing all the testing required for a test standard. However, CSL does not have experience in testing and certification to a complete standard, and may have less opportunity to develop the required experience if it uses others to do these activities. This experience is essential for its continued recognition as an NRTL. Finally, OSHA will need to review the actual implementation of certain key aspects of CSL's operations as an NRTL, which, as already noted, were not yet in place when OSHA performed its on-site review of CSL. As a result, CSL would have to apply in the future for use of any other programs.

Conditions

OSHA has concerns about CSL because the Agency has not had the opportunity to evaluate the actual testing, evaluation, and reporting procedures, and use of the follow-up program, since these have not yet been implemented. Many of these procedures and practices will be new to CSL. Unless CSL meets a condition imposed by OSHA, it could not be recognized as an NRTL under 29 CFR 1910.7. As a result, OSHA plans to conditionally recognize CSL subject to a later assessment of the detailed procedures and practices once they are in place.

This approach is consistent with OSHA's past recognition of other organizations as NRTLs who, like CSL, were mainly experienced in testing products to specific customer or partial test standard requirements. OSHA indicated in the **Federal Register** notice for those recognitions that the procedures to be used were new to the organization (for example, see 56 FR 28581, 6/21/91; and 58 FR 15511, March 23, 1993). OSHA will require CSL to take steps to correct any deficiencies that OSHA may find during its initial follow-up review. If deficiencies are not corrected, then OSHA will commence its process to revoke the recognition of the NRTL.

In addition, OSHA has concerns about the CSL's ability to adequately control its certification mark. CSL plans to monitor use of its mark during its follow-up inspections and plans to monitor media to check for misuse of its mark. However, its procedures on authorizing its labels appear to present the opportunity for a manufacturer to

label, intentionally or not, products that are not covered under the listing agreement with CSL. Under its procedures, CSL gives a manufacturer general authorization to use the CSL mark or label on a product but does not appear to control the actual marking or labeling that the manufacturer would use on a lot or run of production, much less on a series of such runs of production.

CSL's authorization procedure and listing agreement contain provisions to prohibit a manufacturer's use of the mark on products that are not ''identical to the sample'' CSL has certified. However, such proscriptions do not ensure that CSL actually controls its mark on a given run of production. As mentioned, CSL does plan to perform after-the-fact monitoring of the manufacturer to check for misuse. Also, it will take appropriate action if it discovers misuse. However, its procedures do not appear effective in trying to initially prevent misuse of the mark and, to compound matters, its planned monitoring could be ineffective in detecting instances when misuse has occurred, especially considering that many thousands of products may be affected. Such misuse of labels may have serious consequences for workers who use products that they believe are safe, but which turn out to be unsafe and which CSL, although well intentioned in its procedures, cannot effectively detect. As a result, OSHA also plans to include a condition on CSL that it implement, as part of its system for authorization of the use of its mark on products, an effective method to ensure that only products it has certified carry this mark. If CSL does not meet this condition, it would not meet the requirement in 29 CFR 1910.7(b)(3), under which an NRTL must maintain adequate control programs, and could not be recognized as an NRTL.

Therefore, OSHA intends to impose the following conditions in the final notice to officially recognize CSL as an NRTL. These conditions apply solely to CSL's operations as an NRTL and solely to those products that it certifies for purposes of enabling employers to meet OSHA product approval requirements. These conditions would be in addition to all other conditions that OSHA normally imposes in its recognition of an organization as an NRTL.

1. Within 30 days of certifying its first products under the NRTL Program, CSL will notify the OSHA NRTL Program Director so that OSHA may review CSL's implementation of its procedures for testing and certification of products covered within the scope of the test standards listed above.

2. As part of its system of authorization or issuance of the use of its certification mark, CSL must establish, maintain, and utilize proper procedures that ensure its mark is applied only to the specific run(s) of production of the products that CSL has certified.

Preliminary Finding

Curtis-Straus LLC. (CSL) has addressed the requirements that must be met for recognition as an NRTL, as summarized above. In addition, the NRTL Program staff has performed an on-site review of CSL's Littleton, Massachusetts, facility and investigated the processes, procedures, practices, and general operations used by the laboratory. Discrepancies noted by the review staff during the on-site review were addressed by CSL following the on-site evaluation, as detailed above, and are included as an integral part of the on-site review report (see Exhibit 3).

Following a review of the complete application file and the on-site review report, the NRTL Program staff has concluded that the applicant can be granted recognition as a Nationally Recognized Testing Laboratory for the Littleton, Massachusetts, facility and for the five (5) test standards identified above, subject to the conditions and limitation described above. The recognition would also include the two programs listed above. The staff therefore recommended to the Assistant Secretary that the application be preliminarily approved.

Based upon the recommendation of the staff, the Assistant Secretary has made a preliminary finding that Curtis-Straus LLC. can meet the recognition requirements, as prescribed by 29 CFR 1910.7, for the 5 test standards and the facility noted above, with the conditions and limitation to be applied as noted.

OSHA welcomes public comments, in sufficient detail, as to whether Curtis-Straus LLC. has met the requirements of 29 CFR 1910.7 for the expansion of its recognition as a Nationally Recognized Testing Laboratory. Your comment should consist of pertinent written documents and exhibits. To consider it, OSHA must receive the comment at the address provided above (see **ADDRESS**), no later than the last date for comments (see **DATES** above). You may obtain or review copies of the CSL application, the on-site review report, and all submitted comments, as received, by contacting the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. You should refer to Docket No. NRTL–1–99, the permanent record of public information on CSL's recognition.

The NRTL Program staff will review all timely comments and, after resolution of issues raised by these comments, will recommend whether to grant the CSL application for recognition. The Assistant Secretary will make the final decision on granting the recognition and, in making this decision, may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

Signed at Washington, DC, this 3rd day of December, 1999.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 99–32195 Filed 12–10–99; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–156]

NASA Advisory Council (NAC), Task Force on International Space Station Operational Readiness; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces an open meeting of the NAC Task Force on International Space Station Operational Readiness (IOR).

DATES: Wednesday, January 12, 2000, 11 a.m.–12 Noon. Central Standard Time.

ADDRESSES: NASA Johnson Space Center, 2101 NASA Road 1, Building 1, Room 257A, Houston, TX 77058.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Cleary, Code IH, National Aeronautics and Space Administration, Washington, DC 20546–0001, 202/358–4461.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review the results of the Task Force's October 1999 meetings with the Utkin Advisory Expert Council.

—Review the results of the Task Force Working Group on International Space Station Software.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: December 6, 1999.

Mathew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–32206 Filed 12–10–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–158]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Cyrospace Technologies of Houston, TX, has applied for an exclusive license to practice the invention described and claimed in U.S. Patent No. 5,894,223 entitled ''Non-Intrusive Cable Tester'' which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Melanie R. Chan, Licensing & Dual Use Manager, John F. Kennedy Space Center.

DATES: Responses to this Notice must be received on or before February 11, 2000.

FOR FURTHER INFORMATION CONTACT: Melanie R. Chan, Licensing and Dual Use Manager, John F. Kennedy Space Center, Mail Code: MM–E, Kennedy Space Center, FL 32899, telephone (407) 867–6367.

Dated: December 6, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–32208 Filed 12–10–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE 99–157]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Tyco Healthcare Group LP, of Mansfield, MA, has applied for an exclusive license to practice the invention disclosed in U.S. Patent No. 5,738,441, Canadian Patent Application No. 2,226,506, European Patent Application No. 96925292.3, Japanese Patent Application No. 9–505990, New Zealand Patent Application No. 313394 and Australian Patent Application No. 65441/96 entitled ''Electronic Clinical Predictive Thermometer Using Logarithm for Temperature Prediction,'' which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Diana M. Cox, Patent Counsel, John F. Kennedy Space Center.

DATES: Responses to this Notice must be received on or before February 11, 2000.

FOR FURTHER INFORMATION CONTACT: Diana M. Cox, Patent Counsel, John F. Kennedy Space Center, Mail Code MM–E, Kennedy Space Center, FL 32899, telephone (407) 867–6367.

Dated: December 7, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–32207 Filed 12–10–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–155]

Privacy Act; Annual Notice and Amendment to Systems of Records

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Annual Notice and Amendment to Systems of Records.

SUMMARY: Each Federal agency is required by the Privacy Act of 1974 to publish a description of the systems of records it maintains containing personal information when a system is substantially revised, deleted, or created. In this notice, NASA provides the required information on all 20 of its previously published systems of records, is deleting from its inventory one system of records no longer being created or maintained, and is making several revisions to the remaining systems of records to provide editorial and organizational changes to NASA's Systems of Records which were last published in the **Federal Register** on January 28, 1998.

The system of records which is being abolished is entitled ''10ERMS—Executive Resources Management System'' and was previously published in the **Federal Register** on January 28, 1998. The records described in the 10ERMS system of records are no longer needed and will be destroyed in accordance with NASA's Records Retention Schedules, Schedule 3 Item 3.

The Lewis Research Center (LeRC) name has been changed to the John H. Glenn Research Center (GRC) at Lewis Field.

We invite public comment on this publication.

DATES: The effective date of this notice is December 13, 1999. Comments must be received in writing on or before January 12, 2000.

ADDRESSES: Office of the Chief Information Officer, Code AO, NASA Headquarters, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Roland Ridgeway, 202–358–4485.

SUPPLEMENTARY INFORMATION: NASA currently maintains 20 systems of records under the Privacy Act. Each system is described and published in its entirety, as amended, below.

Roland M. Ridgeway, Jr.,

Acting NASA Privacy Officer.

TABLE OF CONTENTS

NASA 10ACMQ—Aircraft Crewmembers' Qualifications and Performance Records
NASA 10BRPA—Biographical Records for Public Affairs
NASA 10EEOR—Equal Opportunity Records
NASA 10GMVP—Government Motor Vehicle Operators Permit Records
NASA 10HABC—History Archives Biographical Collection
NASA 10HERD—Human Experimental and Research Data Records
NASA 10HIMS—Health Information Management System
NASA 10IGIC—Inspector General Investigations Case Files
NASA 10NPPS—NASA Personnel and Payroll Systems
NASA 10SCCF—Standards of Conduct Counseling Case Files
NASA 10SECR—Security Records System
NASA 10SPER—Special Personnel Records
NASA 10XROI—Exchange Records on Individuals
GRC 22ORER—Glenn Research Center Occupational Radiation Exposure Records
GSFC 51LISTS—Locator and Information Services Tracking System (LISTS)
GSFC 51RSCR—Goddard Space Flight Center Radiation Safety Committee Records
JSC 72XOPR—Johnson Space Center Exchange Activities Records
KSC 76RTES—Kennedy Space Center Radiation Training and Experience Summary
KSC 76STCS—Kennedy Space Center Shuttle Training Certification System (YC–04)
KSC 76XRAD—Kennedy Space Center Occupational External Radiation Exposure History for Nuclear Regulatory Commission Licenses

NASA 10ACMQ

SYSTEM NAME:

Aircraft Crewmembers' Qualifications and Performance Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Locations 1 through 11 inclusive as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Crewmembers of NASA aircraft.

CATEGORIES OF RECORDS IN THE SYSTEM:

System contains: (1) Records of qualification, experience, and currency, e.g., flight hours (day, night, and instrument), types of approaches and landings, crew position, type of aircraft, flight check ratings and related examination results, training performed, and medical records; (2) flight itineraries and passenger manifests; and (3) crewmembers' biographical information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473 and 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The following are routine uses: (1) In cases of accident investigations, including mishap and collateral investigations, access to this system of records may be granted to Federal, State, or local agencies or to foreign governments; (2) to Federal, State, or local agencies, companies, or governments requesting qualifications of crewmembers prior to authorization to participate in their flight programs, or to Federal, State, or local agencies, companies, or governments whose crewmembers may participate in NASA's flight programs; (3) public or press releases either by prior approval of the individual, or in the case of public release of information from mishap or collateral investigation reports, pursuant to NASA regulations at 14 CFR part 1213; and (4) standard routine uses 1 through 4 inclusive as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard-copy documents and magnetic media.

RETRIEVABILITY:

Records are indexed by crewmember name.

SAFEGUARDS:

Records are protected in accordance with the requirements and procedures which appear at 14 CFR 1212.605, utilizing locked file cabinets and/or secured rooms.

RETENTION AND DISPOSAL:

Records are maintained in Agency files and destroyed 5 years after crewmember separates from NASA in accordance with NASA Records Retention Schedules, Schedule 8 Item 32.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Aircraft Management Office, Location 1.

Subsystem Managers: Deputy Chief, Flight Control and Cockpit Integration Branch, Location 2; Chief, Dryden Research Aircraft Operations Division, Location 3; Head, Aeronautical Programs Branch, Location 4; Chief, Aircraft Operations Division, Location 5; Chief, Aircraft Operations Office, Location 6; Chief, Flight Operations and Support Division, Location 7; Chief, Aircraft Operations Branch, Location 8; Chief, Aircraft Operations, Location 9; Chief, Contract Management, Location 10; Aircraft Management Officer, Location 11 (Locations are set forth in Appendix A).

NOTIFICATION PROCEDURE:

Information may be obtained from the cognizant system or subsystem manager listed above.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the same address as stated in the Notification section above.

CONTESTING RECORD PROCEDURES:

The NASA regulations for requesting amendments to records and contesting record contents appear at 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

Individuals, training schools or instructors, medical units or doctors.

NASA 10BRPA

SYSTEM NAME:

Biographical Records for Public Affairs.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Locations 1, 3 through 9 inclusive, and Location 11, as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Principal and prominent management and staff officials, program and project managers, scientists, engineers, speakers, other selected employees involved in newsworthy activities, and other participants in Agency programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Current biographical information about the individuals with a recent photograph when available. Data items are those generally required by NASA or the news media in preparing news or feature stories about the individual and/or the individual's activity with NASA.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473 and 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in this system of records is compiled, updated, and maintained at NASA Centers for ready reference material and for immediate availability when required by the news media for news stories about the individual generally involving participation in a major NASA activity.

The following are routine uses: These records are made available to professional societies, civic clubs, industrial and other organizations, news media representatives, researchers, authors, Congress, other agencies and other members of the public in connection with NASA public affairs activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard-copy documents and electronic media.

RETRIEVABILITY:

Records are indexed by individual's name.

SAFEGUARDS:

Since the records are a matter of public information, no safeguard requirements are necessary.

RETENTION AND DISPOSAL:

Records are maintained in Agency files and destroyed when there is no longer a potential for public interest in them in accordance with NASA Records Retention Schedules, Schedule 1, Item 40.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, NASA Newsroom, Public Affairs Division, Location 1.

Subsystem Managers: Public Affairs Officer at Locations 3 through 9 and Location 11 as set forth in Appendix A.

NOTIFICATION PROCEDURE:

An individual desiring to find out if a Biographical System of Records contains a record pertaining to him/her should call, write, or visit the Public Affairs Office at the appropriate NASA Center.

RECORD ACCESS PROCEDURES:

An individual may request access to his/her record by calling, writing, or visiting the Public Affairs Office at the appropriate NASA locations. Individuals may examine or obtain a copy of their biographical record at any time.

CONTESTING RECORD PROCEDURES:

The information in the record was provided voluntarily by the individual with the understanding that the information will be used for public release. The individual is at liberty at any time to revise, update, add, or delete information in his/her biographical record to his/her own satisfaction.

RECORD SOURCE CATEGORIES:

Information in the biography of an individual in the system of records is provided voluntarily by the individual generally with the aid of a form questionnaire.

NASA 10EEOR

SYSTEM NAME:

Equal Opportunity Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Locations 1 through 9 inclusive and Location 11 as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees and applicants for employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Complaints and (2) applications for employment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473; 44 U.S.C. 3101; Executive Order 11478, dated August 8, 1969; EEOC Regulations, 29 CFR part 1614; MSPB Regulations, 5 CFR parts 1200–1202.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The following are routine uses: (1) Disclosures to the Equal Employment Opportunity Commission and the Merit Systems Protection Board to facilitate their processing of discrimination complaints, including investigations, hearings, and reviews on appeals; (2) responses to other Federal agencies and other organizations having legal and administrative responsibilities related to the NASA Equal Employment Opportunity Programs and to individuals in the record; (3) disclosures may be made to a congressional office from the record of an individual in response to a written inquiry from the congressional office made on behalf of the individual; and (4) standard routine uses 1 through 4 inclusive as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard-copy documents and electronic media.

RETRIEVABILITY:

These records are indexed by the complainant's name.

SAFEGUARDS:

Records are locked in file cabinets or in secured rooms with access limited to those whose official duties require access. Electronic data are maintained within locked areas in disk form.

RETENTION AND DISPOSAL:

Records are maintained in Agency files and destroyed 4 years after resolution of case, in accordance with NASA Records Retention Schedules, Schedule 3 Item 50/E. For Compliance Records: the Review files are destroyed when 7 years old and the EEO Compliance Reports are destroyed when 3 years old, in accordance with NASA Records Retention Schedules, Schedule 3 Item 50/E.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Administrator for Equal Opportunity Programs, Location 1.

Subsystem Managers: Equal Opportunity Officer, Locations 1 and 11; Head, Equal Opportunity Programs Office, Location 4; Director of Equal Opportunity Programs at Locations 5 through 9; Locations are as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Information may be obtained from the cognizant system or subsystem manager listed above.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the same address as stated in the Notification section above.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting contents and appealing initial determinations by the individual concerned appear at 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

Current and former employees, applicants, NASA Center Equal Employment Opportunity (EEO) officers, complainants, EEO counselors, EEO investigators, EEOC complaints examiners, Merit System Protection Board officials, complaints coordinators, Associate Administrator for Equal Opportunity Programs.

NASA 10GMVP

SYSTEM NAME:

Government Motor Vehicle Operators Permit Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Locations 3 and 6 as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NASA employees and contractor employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, home address, Social Security Number, physical description of individual, physical condition of individual, traffic record.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473; 44 U.S.C. 3101; 41 CFR subpart 101–38.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The following are routine uses: standard routine uses 1 through 4 inclusive, as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard-copy documents and electronic media.

RETRIEVABILITY:

Indexed by individual's name.

SAFEGUARDS:

Records are kept in locked cabinets with access limited to those whose official duties require access. Room is locked during nonduty hours.

RETENTION AND DISPOSAL:

Records will be maintained in Agency files and destroyed 3 years after permit

expires or holder leaves NASA in accordance with NASA Records Retention Schedules, Schedule 6 Item 12.

SYSTEM MANAGER(S) AND ADDRESS:

Subsystem Managers: Transportation Officer, Location 3 and Chief, Transportation Branch, Location 6. Locations are as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Information may be obtained from the cognizant system manager listed above.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the same address as stated in the Notification section above.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting contents and appealing initial determinations by the individual concerned appear at 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

Individual NASA employees and individual contractor employees supply information on their own traffic records.

NASA 10HABC

SYSTEM NAME:

History Archives Biographical Collection.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Location 1 and 11 as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are of historical significance in aeronautics, astronautics, space science, and other concerns of NASA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical data; speeches and articles by an individual; correspondence, interviews, and various other tapes and transcripts of program activities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473 and 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The following are routine uses: disclosure to scholars (historians and other disciplines) or any other interested individuals for research and to write dissertations, articles, and books, for government, commercial, and nonprofit publication or develop material for other media use.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard-copy documents and electronic media.

RETRIEVABILITY:

The records are indexed by the individual's name.

SAFEGUARDS:

Because these records are archive material and, therefore, a matter of public information, there are no special safeguard procedures required.

RETENTION AND DISPOSAL:

Records are retained indefinitely in Agency reference collections in history offices, but may be destroyed when no longer needed in accordance with NASA Records Retention Schedules, Schedule 1 Item 10.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Historian, Location 1.

Subsystem Manager: Public Affairs Officer, Location 11 as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Information may be obtained from the system manager listed above.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to same address as stated in the Notification section above.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting contents and appealing initial determinations by the individual concerned appear at 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

Press releases, newspapers, journals, copies of internal Agency records, and the individuals themselves.

NASA 10HERD

SYSTEM NAME:

Human Experimental and Research Data Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Locations 1, 2, 5, 6, and 9, as stated in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been involved in space flight, aeronautical research flight, and/or participated in NASA tests or experimental or research programs; civil service employees, military, employees of other government agencies, contractor employees, students, human subjects (volunteer or paid), and other volunteers on whom information is collected as part of an experiment or study.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data obtained in the course of an experiment, test, or research medical data from inflight records, other information collected in connection with an experiment, test, or research.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2475 and 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The following are routine uses: Disclosures to other individuals or organizations, including Federal, State, or local agencies, and nonprofit, educational, or private entities, who are participating in NASA programs or are otherwise furthering the understanding or application of biological, physiological, and behavioral phenomena as reflected in the data contained in this system of records; and the standard routine use 4 as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents, electronic media, micrographic media, photographs, or motion pictures film, and various medical recordings such as electrocardiograph tapes, stripcharts, and x-rays.

RETRIEVABILITY:

By the individual's name, experiment or test; arbitrary experimental subject number; flight designation; or crewmember designation on a particular space or aeronautical flight.

SAFEGUARDS:

Access is limited to Government personnel requiring access in the discharge of their duties and to appropriate support contractor employees on a need-to-know basis. Computerized records are identified by code number and records are maintained in locked rooms or files. Records are protected in accordance with the requirements and procedures, which appear in the NASA regulations set forth in 14 CFR 1212.605.

RETENTION AND DISPOSAL:

Records are maintained in Agency files for varying periods of time depending on the need for use of the records and destroyed when no longer needed in accordance with NASA Records Retention Schedules, Schedule 7 Item 16, except that significant medical data will be handled in accordance with OPM Regulations.

SYSTEM MANAGER(S) AND ADDRESS:

Director, NASA Occupational Health Office, Location 1.

Subsystem Managers: Chief Engineer, Location 2; Assistant Director for Life Sciences, Space and Life Sciences Directorate, Location 5; Director, Biomedical Operations Office, Location 6; Director, Management Services Office, Location 9. Locations are as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Information may be obtained from the system or subsystem manager named above.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the same address as stated in the Notification section above.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting and appealing initial determinations by the individual concerned appear at 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

Experimental test subjects, physicians, principal investigators and other researchers, and previous experimental test or research records.

NASA 10HIMS

SYSTEM NAME:

Health Information Management System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

In Medical Clinics/Units and Environmental Health Offices at Locations 1 through 15 inclusive as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NASA civil service employees and applicants; other Agency civil service and military employees working at NASA; visitors to NASA Centers; onsite contractor personnel who receive job-related examinations, have mishaps or accidents, or come to clinic for emergency or first-aid treatment; space flight personnel and their families.

CATEGORIES OF RECORDS IN THE SYSTEM:

General medical records of first aid, emergency treatment, examinations, exposures, and consultations.

Information resulting from physical examinations, laboratory and other tests, and medical history forms; treatment records; screening examination results; immunization records; administration of medications prescribed by private/personal physicians; statistical records; examination schedules; daily log of patients; correspondence; chemical, physical, and radiation exposure records; other environmental health data; alcohol/drug patient information, consultation records; Employee Assistance Program records; and health hazard and abatement data.

Astronauts and their families—more detailed and complex physical examinations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473; 44 U.S.C. 3101; Pub. L. 92–255.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The following are routine uses: (1) Referral to private physicians designated by the individual when requested in writing; (2) patient referrals; (3) referral to the Office of Personnel Management, Occupational Safety and Health Administration, and other Federal agencies as required in accordance with the Federal agency's special program responsibilities; (4) referral of information to a non-NASA individual's employer; (5) evaluation by medical consultants; (6) disclosure to the employer of non-NASA personnel, information affecting the reliability of such officer or employee for purposes of the Mission Critical Space Systems Personnel Reliability Program; (7) disclosure to non-NASA personnel performing research, studies, or other activities through arrangements or agreements with NASA and for mutual benefit; (8) disclosure to the public of prespace flight information having mission impact concerning an individual crewmember, limited to the crewmember's name and the fact that a medical condition exists; (9) disclosure to the public of a summary of the space flight crew inflight information as it relates to mission impact, and limited to name, diagnosis, treatment, and prognosis; (10) disclosure to the public, limited to the crewmember's name and the fact that a medical condition exists, if a flight crewmember is, for medical reasons, unable to perform a scheduled public event during the time period following Space Shuttle landing and concluding with completion of the post space flight return to duty medical evaluation; (11) disclosure to the public of medical conditions arising from accidents, consistent with NASA regulations; and (12) standard routine use 4, as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are in file folders, punch cards, electrocardiographic tapes, x-rays, microfiche, and electronic media. They are handled between NASA Centers by telecommunications.

RETRIEVABILITY:

By the individual's name, date of birth, and/or Social Security Number.

SAFEGUARDS:

Access limited to concerned medical environmental health personnel on a need-to-know basis. Computerized records are identified by code number, and records are maintained in locked rooms or files. Records are protected in accordance with the requirements and procedures, which appear in the NASA regulations at 14 CFR 1212.605.

RETENTION AND DISPOSAL:

Records are maintained in Agency files and destroyed by series in accordance with Office of Personnel Management regulations and NASA Records Retention Schedules, Schedule 1 Item 126 and Schedule 8 Item 57. Health and medical reports, summaries series at NASA Headquarters are destroyed 6 years after date of summary or report and copies at field installations are destroyed 2 years after date of summary or report. Space flight personnel and their families series records are permanent and transferred to the National Archives and Records Administration when 30 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Occupational Health Office, Location 1.

Subsystem Managers: Chief Occupational Safety Health and Medical Services at Location 2, Medical Director or Medical Administrator or Safety and Health Coordinator at Locations 3 through 4, and 6 through 15 inclusive, and Chief, Medical Operations Branch, Location 5. Locations are as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Information may be obtained from the cognizant system or subsystem manager listed above.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the same address as stated in the Notification section above.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting contents and appealing initial determinations by the individual concerned appears in 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

Individuals, physicians, and previous medical records of individuals.

NASA 10IGIC

SYSTEM NAME:

Inspector General Investigations Case Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Locations 1 through 11, 14, 16 and 17 as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of NASA, contractors, and subcontractors, and others whose actions have affected NASA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Case files pertaining to matters including, but not limited to, the following classifications of cases: (1) Fraud against the Government, (2) theft of Government property, (3) bribery, (4) lost or stolen lunar samples, (5) misuse of Government property, (6) conflict of interest, (7) waiver of claim for overpayment of pay, (8) leaks of Source Evaluation Board information; (9) improper personal conduct, (10) irregularities in awarding contracts; and (11) computer crimes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473; 44 U.S.C. 3101; 28 U.S.C. 535(b); 5 U.S.C. Appendix; 4 CFR part 91; Executive Order 11478.

PURPOSE(S):

Information in this system of records is collected in the course of investigating alleged crimes and other violations of law or regulation that affect NASA. The information is used by prosecutors, Agency managers, law enforcement agencies, Congress, NASA contractors, and others to address the crimes and other misconduct discovered during investigations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The following are routine uses: (1) Responding to the White House regarding matters inquired of; (2) disclosure to a congressional office from the record of an individual in response to a written inquiry from the congressional office made at the request of that individual; (3) providing data to Federal intelligence elements; (4) providing data to any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation, and to identify the type of information requested; (5) providing personal identifying data to Federal, State, local, or foreign law enforcement representative seeking confirmation of identity of persons under investigations; (6) disclosing, as necessary, to a contractor, subcontractor, or grantee firm or institution, to the extent that the disclosure is in NASA's interest and is relevant and necessary in order that the contractor, subcontractor, or grantee is able to take administrative or corrective action; (7) standard routine uses 1 through 4 inclusive as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard-copy documents and electronic media.

RETRIEVABILITY:

Information is retrieved by name of the individual.

SAFEGUARDS:

Information is kept in locked cabinets and in secured vaults and computer rooms. Information stored on computers is on a restricted-access server and is protected by an official password and user identification. Access is limited to Inspector General personnel with an official need to know.

RETENTION AND DISPOSAL:

Records are maintained in Agency files and destroyed in accordance with NASA Records Retention Schedules, Schedule 9 Item 23. Files containing information of an investigative nature but not relate to a specific investigation are destroyed when 5 years old. Significant case files are scheduled for disposition with the National Archives and Records Administration when closed. All other case files are destroyed 10 years after file is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Investigations, Location 1.

Subsystem Managers: Assistant Inspector General for Inspections, Administrative Investigations and Assessments, and Advanced Technology Programs Manager, Location 1; Special and Resident Agents in Charge, Location 2, 4 through 11 inclusive, 14, 16, and 17 as set forth in Appendix A.

NOTIFICATION PROCEDURE:

None. System is exempt (see below).

RECORD ACCESS PROCEDURES:

None. System is exempt (see below).

CONTESTING RECORD PROCEDURES:

None. System is exempt (see below).

RECORD SOURCE CATEGORIES:

Exempt.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

(1) The Inspector General Investigations Case Files systems of records is exempt from any part of the Privacy Act (5 U.S.C. 552a), EXCEPT the following subsections: (b) relating to conditions of disclosure; (c)(1) and (2) relating to keeping and maintaining a disclosure accounting; (e)(4)(A)—(F) relating to publishing a system notice setting forth name, location, categories of individuals and records, routine uses, and policies regarding storage, retrievability, access controls, retention and disposal of the records; (e)(6), (7), (9), (10), and (11) relating to dissemination and maintenance of records; (i) relating to criminal penalties. This exemption applies to those records and information contained in the system of records pertaining to the enforcement of criminal laws.

(2) To the extent that there may exist noncriminal investigative files within this system of records, the Inspector General Investigations Case Files system of records is exempt from the following subsections of the Privacy Act (5 U.S.C. 552a): (c)(3) relating to access to disclosure accounting, (d) relating to access to reports, (e)(1) relating to the type of information maintained in the records; (e)(4)(G), (H), and (I) relating to publishing the system notice information as to agency procedures for access and amendment and information as to the categories of sources of records, and (f) relating to developing agency rules for gaining access and making corrections.

The determination to exempt this system of records has been made by the Administrator of NASA in accordance with 5 U.S.C. 552a (j) and (k) and subpart 5 of the NASA regulations appearing in 14 CFR part 1212, for the reason that a component of the Office of Inspector General, NASA, performs as its principal function activities pertaining to the enforcement of

criminal laws, within the meaning of 5 U.S.C. 552a(j)(2).

NASA 10NPPS

SYSTEM NAME:

NASA Personnel and Payroll Systems.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Locations 1 through 9 inclusive and Location 11, as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former NASA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The data contained in this system of records includes payroll, employee leave, insurance, labor and human resource distribution and overtime information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473; 44 U.S.C. 3101; 5 U.S.C. 5501 *et seq.*; 5 U.S.C. 6301 *et seq.*; General Accounting Office's General Policies/Procedures and Communications Manual, Chapter 7; Treasury Fiscal Requirements Manual, Part III; and NASA Financial Management Manual, Sections 9300 and 9600.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The following are routine uses: (1) To furnish to a third party a verification of an employee's status upon written request of the employee; (2) to facilitate the verification of employee contributions and insurance data with carriers and collection agents; (3) to report to the Office of Personnel Management (a) withholdings of premiums for life insurance, health benefits, and retirements, and (b) separated employees subject to retirement; (4) to furnish the U.S. Treasury magnetic tape reports and/or electronic files on net pay, net savings allotments and bond transmittal pertaining to each employee; (5) to provide the Internal Revenue Service with details of wages taxable under the Federal Insurance Contributions Act and to furnish a magnetic tape listing on Federal tax withholdings; (6) to furnish various financial institutions itemized listings of employee's pay and savings allotments transmitted to the institutions in accordance with employee requests; (7) to provide various Federal, State, and local taxing authorities itemized listings of withholdings for individual income taxes; (8) to respond to requests for State employment security agencies and the U.S. Department of Labor for employment, wage, and separation data on former employees for the purpose of determining eligibility for unemployment compensation; (9) to report to various Combined Federal Campaign offices total contributions withheld from employee wages; (10) to furnish leave balances and activity to the Office of Personnel Management upon request; (11) to furnish data to labor organizations in accordance with negotiated agreements; (12) to furnish pay data to the Department of State for certain NASA employees located outside the United States; (13) to furnish data to a consumer reporting agency or bureau, private collection contractor or debt collection center in accordance with section 3711 of Title 31 of the United States Code; (14) to forward delinquent debts, and all relevant information related thereto, to the U.S. Department of Treasury, for collection; (15) to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, National Directory of New Hires, part of the Federal Parent Locator Service (FPLS) and the Federal Tax Offset System, DHHS/OCSE No. 09–90–0074, for the purpose of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation act (Pub. L. 104–193); and (16) standard routine uses 1 through 4 inclusive as set forth in Appendix B.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b): Disclosures may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or ''private collection contractor'' under the Federal Claims Collection Act of 1966, as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701, *et seq.*).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard-copy documents and electronic media.

RETRIEVABILITY:

Records are indexed by the individual's name and/or Social Security Number.

SAFEGUARDS:

Records are protected in accordance with the requirements and procedures which appear in the NASA regulations at 14 CFR 1212.605, utilizing locked file cabinets and/or secured rooms.

RETENTION AND DISPOSAL:

Records are maintained in Agency files and transferred to the National Personnel Records Center (NPRC) within 3 years of creation in accordance with NASA Records Retention Schedules, Schedule 3 Item 47. Records transferred to NPRC will be destroyed when 10 years old by NPRC.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Financial Management Division, Office of the Chief Financial Officer, Location 1.

Subsystem Managers: Chief, Financial Management Division, Locations 2, 4, 6, 7, and 8; Financial Management Officer, Location 3; Chief, Financial Services Branch, Location 5; Director, Financial Management Office, Location 9; Chief, Financial Management Office, Location 11. Locations are as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Information may be obtained from the cognizant system or subsystem manager listed above.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the same address as identified in the Notification section above.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting contents and appealing initial determinations by the individual concerned appear at 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained, personnel office(s), and the individual's supervisor.

NASA 10SCCF

SYSTEM NAME:

Standards of Conduct Counseling Case Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Location 1 through 11 inclusive as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current, former, and prospective NASA employees who have sought

advice or have been counseled regarding conflict of interest rules for Government employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Depending upon the nature of the problem, information collected may include employment history, financial data, and information concerning family members.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473; 44 U.S.C. 3101; 18 U.S.C. 201, 203, 205, 207–209; 5 U.S.C. 7324–7327; 5 U.S.C. Appendix; 14 CFR part 1207; 5 CFR parts 2634–2641; 5 CFR part 6901; and Executive Order 12674, as modified by Executive Order 12731.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The following are routine uses: (1) Office of Personnel Management, Office of Government Ethics, and Merit Systems Protection Board for investigation of possible violations of standards of conduct which the agencies directly oversee; and (2) standard routine uses 1 through 4 inclusive as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in loose-leaf binders or file folders.

RETREIVABILITY:

By name of individual.

SAFEGUARDS:

Restricted access to persons authorized by General Counsel or Center Chief Counsel; stored in combination lock safe.

RETENTION AND DISPOSAL:

Records are maintained in Agency files and destroyed when 6 years old in accordance with NASA Records Retention Schedules, Schedule 1 Item 133/B.

SYSTEM MANAGER(S) AND ADDRESS:

Associate General Counsel for General Law, Code GG, Location 1, and Chief Counsel, Locations 2 through 11 as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the System Manager and must include employee's full name and NASA Center where employed.

CONTESTING RECORD PROCEDURES:

The NASA regulations and procedures for access to records and for contesting contents and appealing initial determinations by the individual concerned appear at 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

Information collected directly from individual and from his/her official employment record.

NASA 10SECR

SYSTEM NAME:

Security Records System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Locations 1 through 9 and Locations 11, 12, and 14 as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, applicants, NASA committee members, NASA consultants, NASA experts, NASA Resident Research Associates, guest workers, contractor employees, detailees, visitors, correspondents (written and telephonic), and Faculty Fellows.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel Security Records, Criminal Matter Records, Traffic Management Records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2451, *et seq.*, the National Aeronautics and Space Act of 1958, as amended; Espionage and Information Control Statutes, 18 U.S.C. 793–799; Sabotage Statutes, 18 U.S.C. 2151—2157; Conspiracy Statute, 18 U.S.C. 371; 18 U.S.C. 202–208, 3056; Internal Security Act of 1950; Atomic Energy Act of 1954, as amended; Executive Order 12958, as amended, Classified National Security Information; Executive Order 12968, as amended, Access to Classified Information; Executive Order 10865, Safeguarding Classified Information Within Industry; Executive Order 10450, Security Requirements for Government Employees; Pub. L. 81–733; 41 CFR Chapter 101; 14 CFR parts 1203–1203b; and 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Personnel Security Records: The following are routine uses: (1) To determine eligibility to perform classified visits to other Federal agencies and contractor facilities; (2) to provide data to Federal intelligence elements; (3) to provide data to any source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation, and to identify the type of information requested; (4) to provide a basis for determining preliminary visa eligibility; (5) to respond to White House inquiries; (6) disclosures may be made to a congressional office from the record of an individual in response to a written inquiry from the congressional office made at the request of that individual; (7) to provide personal identifying data to Federal, State, local, or foreign law enforcement representatives seeking confirmation of identity of persons under investigation; (8) disclosure to a NASA contractor, subcontractor, grantee, or other Government organization information developed in an investigation or administrative inquiry concerning a violation of a Federal or State statue or NASA regulation on the part of an officer or employee of the contractor, subcontractor, grantee, or other Government organization; (9) to provide relevant information to an internal or external organization or element thereof conducting audit activities of a NASA contractor or subcontractor; (10) disclosure to the employer of non-NASA personnel information affecting the reliability of such officer or employee for purposes of the Mission Critical Space Systems Personnel Reliability Program; and (11) standard routine uses 1 through 4 inclusive as set forth in Appendix B.

Criminal Matter Records: The routine uses are (1) to provide personal identifying data to Federal, State, local, or foreign law enforcement representatives seeking confirmation of identity of persons under investigation; (2) to provide a NASA contractor, subcontractor, grantee, or other Government organization information developed in an investigation or administrative inquiry concerning a violation of a Federal or State statute or NASA regulation on the part of an officer or employee of the contractor, subcontractor, grantee, or other Government organization; and (3) standard routine uses 1 through 4 inclusive as set forth in Appendix B.

Traffic Management Records: The routine uses are (1) to provide personal identifying data to Federal, State, local, or foreign law enforcement representatives seeking confirmation of identity of persons under investigation; (2) to provide a NASA contractor, subcontractor, grantee, or other Government organization information developed in an investigation or

administrative inquiry concerning a violation of a Federal or State statute or NASA regulation on the part of an officer or employee of the contractor, subcontractor, grantee, or other Government organization; and (3) standard routine uses 1 through 4 inclusive as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard-copy documents and electronic media.

RETRIEVABILITY:

Records are indexed by individual's name, file number, badge number, decal number, payroll number, and/or Social Security Number.

SAFEGUARDS:

Access to Personnel Security Records and information to be inserted into Personnel Security Records is controlled by either Government personnel or selected personnel of NASA contractor guard/security force and contractor personnel. After presenting proper identification and requesting a file or record, a person with an official need to know and, if appropriate, a proper clearance may have access to a file or records only after it has been retrieved and approved for release by a NASA security representative. These records are secured in security storage equipment.

Access to Criminal Matter Records is controlled by either Government personnel or selected personnel of NASA contractor guard forces. After presenting proper identification and requesting a file or record, a person with an official need to know and, if appropriate, a proper clearance may have access to a file or records only after it has been retrieved and approved for release by a NASA security representative. These records are secured in security storage equipment.

Traffic Management Records: Access to these records is controlled by either Government personnel or selected personnel of NASA contractor guard forces. Access to these records is permitted after a determination has been made that the requestor has an official interest. These records are stored in locked containers.

RETENTION AND DISPOSAL:

The Personnel Security Records are maintained in Agency files and destroyed upon notification of the death or within 5 years after separation or transfer of employee or within 5 years after contract relationship expires, whichever is applicable in accordance with NASA Records Retention Schedules, Schedule 1 Item 103.

The Criminal Matter Records are maintained in Agency files and destroyed when 8 years old in accordance with NASA Records Retention Schedules, Schedule 2 Item 4B2.

The Traffic Management Records are maintained in Agency files and destroyed upon transfer or separation of permit holder or when permit is superseded or revoked whichever is sooner in accordance with NASA Records Retention Schedules, Schedule 6 Item 11B.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Security Management Office, Location 1.

Subsystem Managers: Chief, Protective Services Division, Location 2; Chief, Security Branch, Locations 4 and 5; Security Officer, Location 3, 8, and 11; Chief, Protective Services Office, Location 6; Head, Office of Security and Public Safety, Location 7; Chief, Security Division, Location 9; Chief, Administration Office, Location 12; Safety and Security Officer at Location 14. Locations are as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Information may be obtained from the cognizant system or subsystem manager listed above. Requests must contain the following identifying data concerning the requestor: First, middle, and last name; date of birth; Social Security Number; period and place of employment with NASA, if applicable.

RECORD ACCESS PROCEDURES:

Personnel Security Records compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information have been exempted by the Administrator under 5 U.S.C. 552a(k)(5) from the access provisions of the Act.

Criminal Matter Records compiled for civil or criminal law enforcement purposes have been exempted by the Administrator under 5 U.S.C. 552a(k)(2) from the access provisions of the Act.

Traffic Management Records: Requests from individuals should be addressed to the same address as stated in the Notification section above.

CONTESTING RECORD PROCEDURES:

For Personnel Security Records and Criminal Matters Records, see Record Access Procedures, above. For Traffic Management Records, the NASA rules for access to records and for contesting contents and appealing initial determinations by the individual concerned appear at 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

Personnel Security Records: Exempt.

Criminal Matter Records: Exempt.

Traffic Management Records: Employees, civil investigative agencies, civil law enforcement agencies, Federal and local judicial systems, medical records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Personnel Security Records compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a confidential source, are exempt from the following sections of the Privacy Act of 1974, 5 U.S.C. 552a: (c)(3) Relating to access to the disclosure accounting; (d) relating to access to the records; (e)(1) relating to the type of information maintained in the records; (e)(4)(G)(H) and (I) relating to publishing in the annual system notice information as to agency procedures for access and correction and information as to the categories of sources of records; and (f) relating to developing agency rules for gaining access and making corrections.

The determination to exempt the Personnel Security Records portion of the Security Records System has been made by the Administrator of NASA in accordance with 5 U.S.C. 552a(k)(5) and Subpart 5 of the NASA regulations appearing in 14 CFR part 1212.

Criminal Matter Records to the extent they constitute investigatory material compiled for law enforcement purposes are exempt from the following sections of the Privacy Act of 1974, 5 U.S.C. 552a: (c)(3) Relating to access to the disclosure accounting; (d) relating to access to the records; (e)(1) relating to the type of information maintained in the records; (e)(4)(G)(H) and (I) relating to publishing in the annual system notice information as to agency procedures for access and correction and information as to the categories of sources of records; and (f) relating to developing agency rules for gaining access and making corrections.

The determination to exempt the Criminal Matter Records portion of the Security Records System has been made by the Administrator of NASA in accordance with 5 U.S.C. 552a(k)(2) and subpart 5 of the NASA regulations appearing in 14 CFR part 1212.

Records subject to the provisions of 5 U.S.C. 552(b)(1) required by Executive

Order to be kept secret in the interest of national defense or foreign policy are exempt from the following sections of the Privacy Act of 1974, 5 U.S.C. 552a: (c)(3) relating to access to the disclosure accounting; (d) relating to the access to the records; (e)(1) relating to the type of information maintained in the records; (e)(4)(G)(H) and (I) relating to publishing in the annual system notice information as to agency procedures for access and correction and information as to the categories of sources of records; and (f) relating to developing agency rules for gaining access and making corrections.

The determination to exempt this portion of the Security Records System has been made by the Administrator of NASA in accordance with 5 U.S.C. 552a(k)(1) and subpart 5 of the NASA regulations appearing in 14 CFR part 1212.

NASA 10SPER

SYSTEM NAME:

Special Personnel Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Locations 1 through 9 inclusive, and location 11 as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Candidates for and recipients of awards or NASA training; civilian and active duty military detailees to NASA; participants in enrollee programs; Faculty, Science, National Research Council and other Fellows, associates and guest workers including those at NASA Centers but not on NASA rolls; NASA contract and grant awardees and their associates having access to NASA premises and records; individuals with interest in NASA matters including Advisory Committee Members; NASA employees and family members, prospective employees and former employees; former and current participants in existing and future educational programs, including the Summer High School Apprenticeship Research Program (SHARP).

CATEGORIES OF RECORDS IN THE SYSTEM:

Special Program Files including: (1) Alien Scientist files; (2) Award files; (3) Counseling files, Life and Health Insurance, Retirement, Upward Mobility, and Work Injury Counseling files; (4) Military and Civilian Detailee files; (5) Personnel Development files such as nominations for and records of training or education, Upward Mobility Program files, Intern Program files, Apprentice files, and Enrollee Program files; (6) Special Employment files such as Federal Junior Fellowship Program files, Stay-in-School Program files, Summer Employment files, Worker-Trainee Opportunity Program files, NASA Executive Position files, Expert and Consultant files, and Cooperative Education Program files; (7) Welfare to Work files; and (8) Supervisory Appraisals under Competitive Placement Plan.

Correspondence and related information including: (1) Claims correspondence and records about insurance such as life, health, and travel; (2) Congressional and other Special Interest correspondence, including employment inquiries; (3) Correspondence and records concerning travel related to permanent change of address; (4) Debt complaint correspondence; (5) Employment interview records; (6) Information related to outside employment and activities of NASA employees; (7) Placement follow-ups; (8) Preemployment inquiries and reference checks; (9) Preliminary records related to possible adverse actions; (10) Records related to reductions in force; (11) Records under administrative as well as negotiated grievance procedures; (12) Separation information including exit interview records, death certificates and other information concerning death, retirement records, and other information pertaining to separated employees; (13) Special planning analysis and administrative information; (14) Performance appraisal records; (15) Working papers for prospective or pending retirements.

Special Records and Rosters including: (1) Locator files, (2) Ranking lists of employees; (3) Repromotion candidate lists; (4) Retired military employee records; (5) Retiree records; (6) Follow-up records for educational programs, such as the SHARP and other existing or future programs.

Agencywide and Center automated personnel information: Rosters, applications, recommendations, assignment information and evaluations of Faculty, Science, National Research Council and other Fellows, associates and guest workers including those at NASA Centers but not on NASA rolls; also, information about NASA contract and grant awardees and their associates having access to NASA premises and records.

Information about members of advisory committees and similar organizations: All NASA-maintained information of the same types as, but not limited to, that information required in systems of records for which the Office of Personnel Management and other Federal personnel-related agencies publish Government wide Privacy Act Notices in the **Federal Register**.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473; 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The following are routine uses: (1) Disclosures to organizations or individuals having contract, legal, administrative or cooperative relationships with NASA, including labor unions, academic organizations, governmental organizations, non-profit organizations, and contractors and to organizations or individuals seeking or having available a service or other benefit or advantage. The purpose of such disclosures is to satisfy a need or needs, further cooperative relationships, offer information, or respond to a request; (2) disclosures to Federal agencies developing statistical or data presentations having need of information about individuals in the records; (3) responses to other Federal agencies and other organizations having legal or administrative responsibilities related to programs and individuals in the records; (4) disclosure to a congressional office from the record of an individual in response to a written inquiry from the congressional office made at the request of that individual; and (5) standard routine uses 1 through 4 inclusive as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard-copy documents and electronic media.

RETRIEVABILITY:

Records are indexed by any one or a combination of name, birth date, Social Security Number, or identification number.

SAFEGUARDS:

Records are protected in accordance with the requirements and procedures that appear in the NASA regulations at 14 CFR 1212.605, utilizing locked file cabinets and/or secured rooms.

RETENTION AND DISPOSAL:

Records are maintained in Agency files and not all record types are authorized for disposal at this time, but records such as Pay records are transferred to the National Personnel Records Center (NPRC) within 3 years of creation in accordance with NASA Records Retention Schedules, Schedule 3 Item 19. Records transferred to NPRC

will be destroyed when 10 years old by NPRC.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Administrator for Human Resources and Education, Location 1. Subsystem Managers: Director, Personnel Division, Office of Inspector General, and Chief, Elementary and Secondary Programs Branch, Educational Division, Location 1; Director of Personnel, Locations 1, 3, 4, 6, and 8; Director of Human Resources, Location 2, 5, and 9; Director, Office of Human Resources, Location 7; Human Resources Officer, Location 11. Locations are as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Apply to the System or Subsystem Manager at the appropriate location above. In addition to personal identification (name, Social Security Number), indicate the specific type of record, the appropriate date or period of time, and the specific kind of individual applying (e.g., employee, former employee, contractor employee).

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

The NASA regulations pertaining to access to records and for contesting contents and appealing initial determinations by individual concerned are set forth in 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained and Personnel Office(s).

NASA 10XROI

SYSTEM NAME:

Exchange Records on Individuals.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Locations 1, 4, 6, 7, 8, 9, and 11 as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former employees of, and applicants for employment, with NASA Exchanges, Recreational Associations, and Employers' Clubs at NASA Centers and members of or participants in NASA Exchange activities, clubs and/or recreational associations. Individuals with active loans or charge accounts at one or more of the several organizations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Exchange employees' personnel and payroll records, including injury claims, unemployment claims, biographical data, performance evaluations, annual and sick leave records, membership and participation records on Exchange-sponsored activities, clubs and/or recreational associations, and all other employee records. Credit records on NASA employees with active accounts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473 and 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The following are routine uses: (1) To Furnish a third party a verification of an employee's status upon written request of the employee; (2) to facilitate the verification of employee contributions for insurance data with carriers and collection agents; (3) to provide various Federal, State, and local taxing authorities itemized listing of withholdings for individual income taxes; (4) to respond to State employment compensation requests for wage and separation data on former employees; (5) to report previous job injuries to worker's compensation organizations; (6) for person to notify in an emergency; (7) to report unemployment record to appropriate State and local authorities; (8) when requested, provide other employers with work record; and (9) standard routine uses 1 through 4 inclusive as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard-copy documents and electronic media.

RETRIEVABILITY:

Records are indexed by individual's name.

SAFEGUARDS:

Records are protected in accordance with the requirements and procedures that appear in the NASA regulations at 14 CFR 1212.605, utilizing locked file cabinets and/or secured rooms.

RETENTION AND DISPOSAL:

Records are maintained in Agency files and destroyed when 5 years old in accordance with NASA Records Retention Schedules, Schedule 9 Item 6/D.

SYSTEMS MANAGER(S) AND ADDRESS:

Associate Administrator, Management Systems & Facilities, Location 1.

Subsystem Managers: Chairperson, Exchange Council, Location 6 and 7; Treasurer, NASA Exchange, Location 8; Exchange Operations Manager, Location 9; Manager, NASA Exchange, Location 11; Head, Administrative Management Branch, and Treasurer Wallops Exchange and Morale Association, Location 4. Locations are as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Individuals may obtain information from the cognizant Subsystem Managers listed above.

RECORD ACCESS PROCEDURES:

Requests from individuals should be directed to the same address as stated in the Notification section above.

CONTESTING RECORD PROCEDURES:

The NASA rules for access to records and for contesting contents and appealing initial determinations by the individual concerned appear in the NASA rules at 14 CFR pasrt 1212.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained and the individual's supervisor.

GRC 22ORER

SYSTEM NAME:

Glenn Research Center Occupational Radiation Exposure Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Locations 8 and 13 as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former GRC employees and contractor personnel who may be exposed to radiation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, date of birth, exposure history, name of license holder, Social Security Number, employment and training history.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473; 44 U.S.C. 3101; 42 U.S.C. 2021, 2073, 2093, 2095, 2111, 2133, 2134, 2201; 10 CFR part 20.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The following are routine uses: (1) Standard routine uses 1 through 4 inclusive as set forth in Appendix B and (2) the Nuclear Regulatory Commission may inspect records pursuant to fulfilling their responsibilities in administering and issuing licenses to use radiation sources.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard-copy documents and electronic media.

RETRIEVABILITY:

Records are indexed by individual's name.

SAFEGUARDS:

Records are personally supervised during the day and locked in the office at night.

Records are protected in accordance with the requirements and procedures that appear in the NASA regulations at 14 CFR 1212.605.

RETENTION AND DISPOSAL:

Records are maintained in Agency files and destroyed when 75 years old in accordance with NASA Records Retention Schedules, Schedule 1 Item 130/D.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Environmental Health, Location 8.

Subsystem Manager: Manager, Plum Brook Reactor Facility, Location 13. Locations are set forth in Appendix A.

NOTIFICATION PROCEDURE:

Individuals may obtain information from the cognizant System Manager or Subsystem Manager listed above.

RECORD ACCESS PROCEDURES:

Individuals may obtain information from the appropriate System Manager or Subsystem Manager listed above.

CONTESTING RECORD PROCEDURES:

The NASA rules for access to records and for contesting contents and appealing initial determinations by the individual concerned appear in the NASA rules at 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

Individual is sole source.

GSFC 51LISTS

SYSTEM NAME:

Locator and Information Services Tracking System (LISTS).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Location 4 as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All onsite and offsite NASA/GSFC civil service personnel and onsite and nearsite contractors, tenants, and other guest workers possessing or requiring badge identifications.

CATEGORIES OF RECORDS IN THE SYSTEM:

In order to achieve the goal for LISTS of a comprehensive and accurate source of information for institutional services and planning, general and personal information as noted below must be collected.

General information: (1) Last Name; (2) First Name; (3) Middle Initial; (4) Nickname; (5) Title/Degree; (6) Position/Job Title; (7) Skill Classification; (8) Administrative Level; (9) Organization Code; (10) Mail Code; (11) Telephone Extension; (12) Alternate Telephone Extension; (13) Building; (14) Room; (15) Shift Worked; (16) Offsite Telephone Number; (17) Offsite Location; (18) Contract Number; (19) Authorization Type if Non-Contractor/Civil Service personnel; (20) and (21) Acronym of Contractor and/or Host Organization; (22) FAX Numbers (optional); and (23) E-mail Addresses (optional).

Personal information: (1) Social Security Number; (2) Birth Date; (3) Sex; (4) Citizenship; (5) If Not U.S. Citizen, Immigration Alien Number; (6) Street Residence; (7) City Residence; (8) County Residence; (9) State Residence; (10) Zip Code Residence; (11) Residence Telephone; (12) Name of Emergency Contact; (13) Relationship of Emergency Contact; (14) Telephone Number of Emergency Contact; and (15) Address of Emergency Contact.

AUTHORITY FOR MAINTENANCE FOR THE SYSTEM:

5 U.S.C. 301; 42 U.S.C. 2473; 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The following are routine uses: (1) Disclosures to organizations or individuals having contract, legal, administrative, or cooperative relationships with NASA, including labor unions, academic organizations, governmental organizations, nonprofit organizations, and contractors and to organizations or individuals seeking or having available a service or other benefit or advantage. The purpose of such disclosures is to satisfy a need or needs, further cooperative relationships, offer information, or respond to a request; (2) statistical or data presentations may be made to governmental or other organizations or individuals having need of information about individuals in the records; (3) disclosure may be made to a congressional office from the record of an individual in response to written inquiry from the congressional office made at the request of that individual; and (4) standard routine uses 1 through 4 inclusive as set forth in Appendix B may also apply.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard-copy documents and electronic media.

RETRIEVABILITY:

General fields are indexed by any one or combination of choices to authorized users. Personal fields are not retrievable except by designees in the Security and Library Offices and the System Manager. For the library, the retrievability is for Social Security Number, immigration alien number, and name only.

SAFEGUARDS:

Records are protected in accordance with the requirements and procedures which appear in the NASA regulations at 14 CFR 1212.605, utilizing locked file cabinets and/or secured rooms and through the password and access protections built into the data base management software system.

RETENTION AND DISPOSAL:

Records are maintained in Agency files and destroyed when no longer needed in accordance with NASA Records Retention Schedules, Schedule 1 Item 104.

SYSTEM MANAGER(S) AND ADDRESS:

Institutional Support Office, Code 201.0, Location 4 as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Apply to GSFC Security Office at the appropriate location. Processing requires a completed and signed GSFC Form 24–27.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures above.

CONTESTING RECORD PROCEDURES:

The NASA regulations pertaining to access to records and for contesting contents and appealing initial determinations by the individual concerned are set forth in 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

Individuals to whom the records pertain.

GSFC 51RSCR

SYSTEM NAME:

Goddard Space Flight Center Radiation Safety Committee Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Location 4 as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Radiation users and custodians under GSFC cognizance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employment and training history.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2743; 44 U.S.C. 3101; USNRC License and GHB 1860.1, ''Radiation Safety Handbook''; GHB 1860.2, ''Radiation Safety Radio Frequency''; GHB 1860.3, ''Radiation Safety Laser.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The following are routine uses: (1) The Nuclear Regulatory Commission may inspect records pursuant to fulfilling their responsibilities in administering and issuing licenses to use radiation sources; (2) Occupational Safety and Health Administration (Federal and State) may inspect records pursuant to fulfilling their responsibilities under the occupational safety and health laws; (3) the Environmental Protection Agency may inspect records pursuant to fulfilling their responsibilities under the environmental protection laws and executive order; (4) the Food and Drug Administration may inspect records pursuant to fulfilling their responsibilities concerning use of lasers and x-rays; (5) standard routine uses 1 through 4 inclusive as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard-copy documents and electronic media.

RETRIEVABILITY:

Records are indexed by individual's name only.

SAFEGUARDS:

Records are located in locked metal file cabinet in locked room with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are maintained in Agency files and destroyed when 75 years old in accordance with NASA Records Retention Schedules, Schedule 1 Item 130/A.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Health, Safety, and Security Office, Location 4, as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Individuals may obtain information from the System Manager.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting contents and appealing initial determinations by the individual concerned appear at 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

Employees.

JSC 72XOPR

SYSTEM NAME:

Johnson Space Center Exchange Activities Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Location 5 as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and past employees of Johnson Space Center (JSC) Exchange Operations, applicants under the JSC Exchange Scholarship Program, and JSC employees or JSC contractor employees participating in sports or special activities sponsored by the Exchange.

CATEGORIES OF RECORDS IN THE SYSTEM:

For present and past employees of the JSC Exchange Operations, the system includes a variety of records relating to personnel actions and determinations made about an individual while employed by the NASA Exchange-JSC. These records contain information about an individual relating to birth date; Social Security Number; home address and telephone number; marital status; references; veteran preference, tenure, handicap; position description, past and present salaries, payroll deductions, leave; letters of commendation and reprimand; adverse actions, charges and decisions on charges; notice of reduction in force; personnel actions, including but not limited to, appointment, reassignment, demotion, detail, promotion, transfer and separation; minority group; records relating to life insurance, health and retirement benefits; designation of beneficiary; training; performance ratings; physical examinations; criminal matters; data documenting the reasons for personnel actions or decisions made about an individual; awards; and other information relating to the status of the individual.

For successful applicants under the JSC Exchange Scholarship Program, the system contains financial transactions or holdings, employment history, medical data and other related information supplied by the individual Center employees who applied for the Exchange Scholarship.

For participants in social or sports activities sponsored by the Exchange, information includes employees' or contractors' employee identification number, organization, location, telephone number, and other information directly related to status or interest in participation in such activities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473; 44 U.S.C. 3101; NASA Policy Directive 9050.6; Treasury Fiscal Requirement Manual, Part III.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The following are routine uses for information maintained on JSC Exchange Operations employees only: (1) Provide information in accordance with legal or policy directives and regulations to the Internal Revenue Service, Department of Labor, Department of Commerce, Texas State Government Agencies, labor unions; (2) provide information to insurance carriers with regard to worker's compensation, health and accident, and retirement insurance coverages; (3) provide employment or credit information to other parties as requested by a current or former employee of the JSC Exchange Operations; and (4) standard routine uses 1 through 4 inclusive as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard-copy documents and electronic media.

RETRIEVABILITY:

For JSC Exchange employees, records are maintained by name and filed as current or past employee. For Scholarship applicants, records are maintained by name. For participants in social or sports activities, records are maintained by name.

SAFEGUARDS:

Records are located in locked metal file cabinets with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Personnel records of JSC Exchange operations employees are retained indefinitely in Agency space to satisfy payroll, reemployment, unemployment compensation, tax, and employee retirement purposes. For successful applicants under the JSC Exchange Scholarship Program, records are maintained until completion of awarded scholarship and are then destroyed. Records pertaining to unsuccessful applicants are returned to the individual. For participants in social or sports activities, records are maintained for stated participation period and are then destroyed. These dispositions are in accordance with NASA Records Retention Schedules, Schedule 9 Item 6/E.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Exchange Operations, NASA Exchange-JSC, Location 5, as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Individuals may obtain information from the System Manager.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting contents and appealing initial determinations by the individual concerned appear in 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

For employees of the JSC Exchange Operations, information is obtained from the individual employee, the employee references, insurance carriers, JSC Health Services Division, JSC Security, employment agencies, Texas Employment Commission, credit bureaus, and creditors.

With respect to the JSC Exchange Scholarship Program, the information is obtained from the parents or guardians of the scholarship participants.

For JSC employees and JSC contractor employees participating in social or sports activities sponsored by the Exchange, information is obtained from the individual participant.

KSC 76RTES:

SYSTEM NAME:

Kennedy Space Center Radiation Training and Experience Summary.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Location 6 as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Custodians and/or users of sources of radiation (ionizing and nonionizing). Applicable to all users or custodians at KSC and NASA or NASA contractor personnel at Cape Canaveral Air Force Station, Florida, or Vandenberg Air Force Base, California.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name and radiation related training and experience.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473; 44 U.S.C. 3101; 42 U.S.C. 2021, 2111, 2201, 2232, 2233; 10 CFR part 33 for Federal Licensee; and Florida Administrative Code, Chapter 10 D–56 for State Licensee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine uses include (1) disclosure to Air Force Radiation Protection Officers at Eastern Space and Missile Center, Patrick Air Force Base, Florida, and Vandenberg Air Force Base, California, to governmental and private license holders, and to NASA contractors using sources of radiation to facilitate protection of the individual and the public; (2) standard routine uses 1 through 4 inclusive as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard-copy documents and electronic media.

RETRIEVABILITY:

Records are indexed by individual's name.

SAFEGUARDS:

Records are personally supervised during the day and locked in the office at night. Records are protected in accordance with the requirements and procedures, which appear in the applicable NASA regulations at 14 CFR 1212.605.

RETENTION AND DISPOSAL:

Records are maintained in Agency files and destroyed when 75 years old in accordance with NASA Records Retention Schedules, Schedule 1 Item 130/B.

SYSTEM MANAGER(S) AND ADDRESS:

KSC Radiation Protection Officer, Location 6 as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Individuals may obtain information from the System Manager.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting contents and appealing initial determinations by the individual concerned appear at 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

Individual is sole source.

KSC 76STCS

SYSTEM NAME:

Kennedy Space Center Shuttle Training Certification System (YC–04).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Location 6 as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Kennedy Space Center (KSC) civil service, KSC contractor, and Department of Defense personnel who have received systems, safety, reliability and quality assurance, and skills training in support of KSC or Space Shuttle operations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of training attendance and certifications, including certifications of physical ability to perform hazardous tasks.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473; 44 U.S.C. 3101

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The following are routine uses: (1) Disclosure is made of information on employees of KSC contractors to those contractor organizations and to the Base Operations contractor, to facilitate the performance of the contracts. The Base Operations contractor compiles these training records for KSC; (2) standard routine uses 1 through 4 inclusive as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard-copy documents and electronic media. All records for KSC are maintained by a NASA contractor on computer tape with printouts made as required. Bar code readers are utilized for transfer of information on course attendees to a central processing unit by contractor personnel.

RETRIEVABILITY:

Indexed by Social Security Number and individual's name.

SAFEGUARDS:

These training records are maintained under administrative control of responsible organizations in areas that are locked when not in use. In addition, records are safeguarded in accordance with the requirements and procedures, which appear in the NASA regulations at 14 CFR 1212.605.

RETENTION AND DISPOSAL:

Records are maintained in Agency files and destroyed 3 years after trainee is separated from NASA in accordance with NASA Records Retention Schedules, Schedule 8 Item 33.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Human Resources Development Branch, Location 6, as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Individuals may obtain information from the System Manager.

RECORDS ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting contents and for appealing initial determinations by the individual concerned appear at 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

Information is obtained from class input, rosters, operational records, reports of physical examination completions, and actions implemented by certification boards.

KSC 76XRAD

SYSTEM NAME:

Kennedy Space Center Occupational External Radiation Exposure History for Nuclear Regulatory Commission Licenses.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Location 6 as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

KSC civil service personnel and KSC contractor personnel who have received radiation exposure.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, date of birth, exposure history, name of license holder, Social Security Number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473; 44 U.S.C. 3101; 42 U.S.C. 2021, 2073, 2093, 2095, 2111, 2133, 2134, and 2201; 10 CFR part 20 for Federal Licensee; and Florida Administrative Code, Chapter 10 D–56 for State Licensee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The following are routine uses: (1) Disclosure to Air Force Radiation Protection Offices at Eastern Space and Missile Center, Patrick Air Force Base, Florida, and Vandenberg Air Force Base, California, to governmental and private license holders, and to NASA contractors using radioactive materials or ionizing radiation producing devices to facilitate the protection of individuals; (2) standard routine uses 1 through 4 inclusive as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard-copy documents and electronic media.

RETRIEVABILITY:

Records are indexed by the individual's name.

SAFEGUARDS:

Records are personally supervised during the day and locked in the office at night. Records are protected in accordance with the requirements and procedures, which appear in the NASA regulations at 14 CFR 1212.605.

RETENTION AND DISPOSAL:

Records are maintained in Agency files and destroyed when 75 years old in accordance with NASA Records Retention Schedules, Schedule 1 Item 130/C.

SYSTEM MANAGER(S) AND ADDRESS:

KSC Radiation Protection Officer, Location 6, as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Individuals may obtain information from the System Manager.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting contents and appealing initial determinations by the individual concerned appear at 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

Individual is sole source.

APPENDIX A—LOCATION NUMBERS AND MAILING ADDRESSES OF NASA INSTALLATIONS AT WHICH RECORDS ARE LOCATED

Location 1.
NASA Headquarters, National Aeronautics and Space Administration Washington, DC 20546–0001

Location 2.
Ames Research Center, National Aeronautics and Space Administration, Moffett Field, CA 94035–1000

Location 3.
Dryden Flight Research Center, National Aeronautics and Space Administration, PO Box 273, Edwards, CA 93523–0273

Location 4.
Goddard Space Flight Center, National Aeronautics and Space Administration, Greenbelt, MD 20771–0001

Location 5.
Lyndon B. Johnson Space Center, National Aeronautics and Space Administration, Houston, TX 77058–3696

Location 6.
John F. Kennedy Space Center, National Aeronautics and Space Administration, Kennedy Space Center, FL 32899–0001

Location 7.
Langley Research Center, National Aeronautics and Space Administration, Hampton, VA 23681–2199

Location 8.
John H. Glenn Research Center at Lewis Field, National Aeronautics and Space Administration, 21000 Brookpark Road, Cleveland, OH 44135–3191

Location 9.
George C. Marshall Space Flight Center, National Aeronautics and Space Administration, Marshall Space Flight Center, AL 35812–0001

Location 10.
HQ NASA Management Office-JPL, National Aeronautics and Space Administration, 4800 Oak Grove Drive, Pasadena, CA 91109–8099

Location 11.
John C. Stennis Space Center, National Aeronautics and Space Administration, Stennis Space Center, MS 39529–6000

Location 12.
JSC White Sands Test Facility, National Aeronautics and Space Administration, PO Drawer MM, Las Cruces, NM 88004–0020

Location 13.
GRC Plum Brook Station, National Aeronautics and Space Administration, Sandusky, OH 44870

Location 14.
MSFC Michoud Assembly Facility, National Aeronautics and Space Administration, PO Box 29300, New Orleans, LA 70189

Location 15.
NASA Independent Verification and Validation Facility (NASA IV&V), 100 University Drive, Fairmont, WV 26554

Location 16.
Edison Post of Duty, c/o DCIS, PO 1054, Edison, NJ 08818

Location 17.
Western Field Office, Glenn Anderson Federal Building, 501 West Ocean Blvd., Long Beach, CA 90802–4222

APPENDIX B—STANDARD ROUTINE USES—NASA

The following routine uses of information contained in systems of records, subject to the Privacy Act of 1974, are standard for many NASA systems. They are cited by reference in the paragraph ''Routine uses of records maintained in the system, including categories of users and the purpose of such uses'' of the **Federal Register** Notice on those systems to which they apply.

Standard Routine Use No. 1—LAW ENFORCEMENT—In the event that this system of records indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

Standard Routine Use No. 2—DISCLOSURE WHEN REQUESTING INFORMATION—A record from this system of records may be disclosed as a 'routine use' to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

Standard Routine Use No. 3—DISCLOSURE OF REQUESTED INFORMATION—A record from this system of records may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

Standard Routine Use No. 4—COURT OR OTHER FORMAL PROCEEDINGS—In the event there is a pending court or formal administrative proceeding, any records which are relevant to the proceeding may be disclosed to the Department of Justice or other agency for purposes of representing the Government, or in the course of presenting evidence, or they may be produced to parties or counsel involved in the proceeding in the course of pretrial discovery.

[FR Doc. 99–32039 Filed 12–10–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before January 27, 2000. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301)713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too, includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Commerce, Bureau of the Census (N1–29–00–01, 2 items, 1

temporary item). Completed paper questionnaire forms of the 2000 Decennial Census, and the Individual Census Record File in electronic format. The completed paper questionnaires are sent to the Data Capture Centers for processing. The paper forms are scanned to create electronic images of the questionnaires, which are proposed for disposition in Disposition Job No. N1–29–00–02. All information from the scanned electronic image files is transferred to the Individual Census Record File, which is proposed for permanent retention.

2. Department of Commerce, Bureau of the Census (N1–29–00–02, 52 items, 35 temporary items). Comprehensive schedule pertaining to all textual and electronic records of the 2000 Decennial Census, except the paper questionnaire forms and Individual Census Record File which are proposed for disposition in Disposition Job No. N1–29–00–1. The schedule covers six major processes of the decennial census: address list development, data collection, data capture, data processing, accuracy and coverage evaluations, and data products. Also included are program and administrative records such as pre-test questionnaires, contracts and related records, source documents relating to research, evaluation, and experimental programs. Records proposed for disposal include address lists and map update records, block canvassing, special place and group quarters inventories, local updates to census address lists, new construction lists, updates or revisions to census maps in electronic format, update/leave questionnaires, urban update/leave questionnaires, list enumeration and address registers, updates and revisions to the Master Address File, questionnaires, maps, and address registers created for special enumerations, respondent data collected by telephone assistance and through the Internet response program, operations and control records, electronic images of scanned paper questionnaires, unprocessed electronic source files of information captured from the electronic images, the Decennial Response File, the Census Unedited File, the Census Unedited File Sample, the Census Edited File, the Census Edited File Sample, the Accuracy and Coverage Evaluation (ACE) address lists, ACE telephone interview records, personal interview records and maps, dual system estimates, ACE support and management records, Census 2000 contracts and related records, census pretest records, research, evaluation, and experimental program records, and records created using electronic mail and word processing applications.

Records proposed for permanent retention include the final Census 2000 electronic maps, the final electronic Decennial Master Address File and documentation, the Census 2000 Detail File, the Hundred Percent Estimated Detail File, the Sample Estimated Detail File, the State Populations Totals File, the Redistricting Data File, the Block-Level Data File, the statistically corrected and uncorrected Hundred Percent Data Summary Files, the Sample Data Summary File, the Public Use Microdata Sample Files, the statistically corrected and uncorrected Congressional District Data Summary Files, and all other final data products created for Island areas or other special demographic or geographic enumerations.

Dated: December 8, 1999.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 99–32241 Filed 12–10–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules for Electronic Copies Previously Covered by General Records Schedule 20; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal.

This request for comments pertains solely to schedules for electronic copies of records created using word processing and electronic mail where the recordkeeping copies are already scheduled. (Electronic copies are records created using word processing or electronic mail software that remain in storage on the computer system after the recordkeeping copies are produced.)

These records were previously approved for disposal under General Records Schedule 20, Items 13 and 14. Pursuant to NARA Bulletin 99–04, agencies must submit schedules for the electronic copies associated with program records and administrative records not covered by the General Records Schedules. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a). To facilitate review of these schedules, their availability for comment is announced in Federal Register notices separate from those used for other records disposition schedules.

DATES: Requests for copies must be received in writing on or before January 27, 2000. On request, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums concerning a proposed schedule. These, too, may be requested. Requesters will be given 30 days to submit comments.

Some schedules submitted in accordance with NARA Bulletin 99–04 group records by program, function, or organizational element. These schedules do not include descriptions at the file series level, but, instead, provide citations to previously approved schedules or agency records disposition manuals (see Supplementary Information section of this notice). To facilitate review of such disposition requests, previously approved schedules or manuals that are cited may be requested in addition to schedules for the electronic copies. NARA will provide the first 100 pages at no cost. NARA may charge $.20 per page for additional copies. These materials also may be examined at no cost at the National Archives at College Park (8601 Adelphi Road, College Park, MD).

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records. mgt@arch2.nara.gov.

Requesters must cite the control number, which appears in parentheses after the name of the agency which

submitted the schedule, and must provide a mailing address. Those who desire appraisal reports and/or copies of previously approved schedules or manuals should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs the records to conduct its business. Routine administrative records common to most agencies are approved for disposal in the General Records Schedules (GRS), which are disposition schedules issued by NARA that apply Government-wide.

In the past, NARA approved the disposal of electronic copies of records created using electronic mail and word processing via General Records Schedule 20, Items 13 (word processing documents) and 14 (electronic mail). However, NARA has determined that a different approach to the disposition of electronic copies is needed. In 1998, the Archivist of the United States established an interagency Electronic Records Work Group to address this issue and pursuant to its recommendations, decided that agencies must submit schedules for the electronic copies of program records and administrative records not covered by the GRS. On March 25, 1999, the Archivist issued NARA Bulletin 99–04, which tells agencies what they must do to schedule electronic copies associated with previously scheduled program records and certain administrative records that were previously scheduled under GRS 20, Items 13 and 14.

Schedules submitted in accordance with NARA Bulletin 99–04 only cover the electronic copies associated with previously scheduled series. Agencies that wish to schedule hitherto unscheduled series must submit separate SF 115s that cover both recordkeeping copies and electronic copies used to create them.

In developing SF 115s for the electronic copies of scheduled records, agencies may use either of two scheduling models. They may add an appropriate disposition for the electronic copies formerly covered by GRS 20, Items 13 and 14, to every item in their manuals or records schedules where the recordkeeping copy has been created with a word processing or electronic mail application. This approach is described as Model 1 in Bulletin 99–04. Alternatively, agencies may group records by program, function, or organizational component and propose disposition instructions for the electronic copies associated with each grouping. This approach is described as Model 2 in the Bulletin. Schedules that follow Model 2 do not describe records at the series level.

For each schedule covered by this notice the following information is provided: name of the Federal agency and any subdivisions requesting disposition authority; the organizational unit(s) accumulating the records or a statement that the schedule has agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency; the control number assigned to each schedule; the total number of schedule items; the number of temporary items (the record series proposed for destruction); a brief description of the temporary electronic copies; and citations to previously approved SF 115s or printed disposition manuals that scheduled the recordkeeping copies associated with the electronic copies covered by the pending schedule. If a cited manual or schedule is available from the Government Printing Office or has been posted to a publicly available Web site, this too is noted.

Further information about the disposition process is available on request.

Schedules Pending

1. Department of Defense, Office of the Inspector General (N9–509–00–01, 163 items, 163 temporary items). Electronic copies of documents created using electronic mail and word processing that relate to the programs and activities of the Office of the Inspector General. Included are electronic copies of records relating to administration, personnel management, planning and management, budget and finance, auditing, investigations, and inspections. This schedule follows Model 1 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Recordkeeping copies of these files are included in Disposition Job Nos. N1–330–88–4, N1–330–90–4, N1–330–92–4, N1–509–93–1, N1–509–93–2, and N1–509–97–1.

2. Federal Communications Commission, Wireless Bureau (N9–173–00–4, 1 item, 1 temporary item). Electronic copies of records created using electronic mail and word processing that relate to the development and administration of policies and programs for the regulation of two-way radio communications systems. Included are electronic copies of records pertaining to licensing, general operations, budgets, committee and conference activities, exemptions from treaty requirements, rulemaking, enforcements, and antennae structure registration. This schedule follows Model 2 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Recordkeeping copies of these files are included in Disposition Job Nos. NC1–173–78–2, NC1–173–79–1, N1–173–84–3, N1–173–84–4, N1–173–94–2, and N1–173–98–6.

Dated: December 6, 1999.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 99–32166 Filed 12–10–99; 8:45 am]

BILLING CODE 7515–01–M

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

SES Performance Review Board

AGENCY: The National Endowment for the Humanities, NFAH.

ACTION: Notice.

SUMMARY: This notice announces the membership of the Performance Review Board of the National Endowment for the Humanities.

FOR FURTHER INFORMATION CONTACT: Timothy G. Connelly, Director of Human Resources, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW, Washington, DC 20506; telephone (202) 606–8415.

SUPPLEMENTARY INFORMATION: 5 U.S.C. 3393 and 4314(c) (1) through (5) require each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, both an executive resources board and a performance review board for SES. The National Endowment for the Humanities has a combined Board, which is referred to as the Executive Resources and Performance Review Board (ERPRB).

Effective January 1, 2000, the members of the National Endowment for the Humanities SES Performance

Review Board selected to serve two-year appointments are Carol Watson, Senior Advisor—Board Chairman, Nancy Rogers, Director, Division of Public Programs and Jeffrey Thomas, Director, Office of Strategic Planning. Ann Young Orr, Chief of Staff and Virginia R. Canter, General Counsel, will serve until replaced.

William R. Ferris,

Chairman.

[FR Doc. 99–32169 Filed 12–10–99; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

Correction to Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

On November 8, 1999 (64 FR 60854), the **Federal Register** published a Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing. On page 60855, bottom paragraph of column 3, the notice identified ''issuance of amendment to the NMP2 operating license.'' The ''issuance of amendment to the NMP2 operating license'' should read ''issuance of amendment to the FitzPatrick operating license.''

Dated at Rockville, Maryland, this 7tth day of December 1999.

For the Nuclear Regulatory Commission.

Guy S. Vissing, Sr.,

Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–32189 Filed 12–10–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Development of Guidelines for Voluntary Industry Initiatives and Notice of Public Meeting With the Nuclear Energy Institute (NEI) and Members of the Public

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Nuclear Regulatory Commission (NRC) requests public participation and input in the development of Guidelines for Voluntary Industry initiatives. The NRC in a staff requirements memorandum (SRM) dated May 27, 1999 (*http://www.nrc.gov/NRC/COMMISSION/*SRM/1999–063srm.html) approved the use of voluntary industry initiatives as an appropriate substitute for NRC regulatory action. The voluntary initiatives may be used where the action to be taken is needed to meet existing requirements, or for cases where a substantial increase in overall protection can be achieved with costs of implementation justifying the increased protection. The SRM was issued in response to SECY–99–063, ''The Use by Industry of Voluntary Initiatives in the Regulatory Process,'' dated March 2,1999 (http://www.nrc.gov/NRC/COMMISSION/SECYS/1999–063scy.html).

DATES: December 21, 1999, from 8:30 am to 12:00 noon.

ADDRESSES: Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738, in Room 0–8–B–4.

SUPPLEMENTARY INFORMATION: On October 27, 1999, a stakeholders meeting was held in Rosemont, Illinois, to obtain input from the industry, the Nuclear Energy Institute (NEI), and the public for the development of a regulatory framework to support the implementation of voluntary industry initiatives. The NRC staff presented an outline of a process for the development of guidelines in order to facilitate discussion. The meeting emphasis was focused on nine areas, as specified in SECY–99–063:

- Definition and initiation of voluntary industry initiatives,
- Identification of staff and industry roles,
- Tracking of licensee commitments,
- Planning and resource allocation,
- Fee management,
- Developing inspection and monitoring guidelines,
- Public participation,
- Developing enforcement procedures, and
- Schedule for finalizing guidelines/process.

The meeting summary is available through ADAMS.

Meeting Information

The NRC staff intends to conduct a follow-up meeting with interested members of the industry, NEI, and the public, on Tuesday, December 21, 1999, from 8:30 a.m –12:00 p.m., at the U.S. Nuclear Regulatory Commission Headquarters. This meeting will solicit additional information related to the development of guidelines to allow the drafting of a regulatory framework that supports the implementation of voluntary industry initiatives.

December 21, 1999—Agenda

Agenda: Preliminary agenda is as follows (a final agenda will be available at the meeting):

8:30 a.m. Introduction
8:45–9:00 Overview of issues
9:00–11:30 Discussion of specific points, including:

1. NRC Regulatory Actions
   a. Imposition of new regulatory requirements based upon current regulations/compliance (design and licensing basis)
   b. Emergent technical/regulatory issues
   c. Safety significance
   d. Regulatory scope—within and outside of current regulatory requirements
2. NRC use of voluntary industry initiatives ''. . . as an appropriate substitute for regulatory action.'' Industry initiatives and guidelines:
   a. Endorsed by NRC as acceptable means to meet the requirement of a regulation
   b. Endorsed by NRC as acceptable means for addressing an NRC issue or concern
   c. Not endorsed by NRC, but recognized as an acceptable means for addressing an NRC issue or concern
   d. Non-regulatory issues
   e. Licensee commitments
   f. Inspection and enforcement
3. NRC credits industry action in implementing voluntary industry initiatives
4. NEI's input to process development

11:30–11:45 Wrap-up discussion

Location: U.S. Nuclear Regulatory Commission Headquarters, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, in Room O–8–B–4.

Registration: No registration fee for meeting; however, notification of attendance is requested so that adequate space, etc., for the meeting can be arranged. Persons interested in additional information regarding, attending or participating in this meeting should notify C. E. Carpenter, Office of Nuclear Reactor Regulation, M/S O–7–D–4, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001, 301–415–2169, email cec@nrc.gov.

Solicitation of Comments from Stakeholders: The NRC staff is soliciting additional stakeholder comments from interested parties on both the technical and regulatory aspects related to the development of guidelines to allow the drafting of a regulatory framework that supports the implementation of voluntary industry initiatives. The staff

requests that all such comments be forwarded to the below contact no later than January 30, 2000, for consideration in the final proposal that will be submitted for Commission approval by May 30, 2000. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

To Submit Comments: Submit written comments to C. E. Carpenter, Office of Nuclear Reactor Regulation, M/S O–7–D–4, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001, 301–415–2169, email cec@nrc.gov. Written comments may also be delivered to 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC.

Contact: C. E. Carpenter, 301–415–2169, email cec@nrc.gov.

Dated at Rockville, MD this 3rd day of December, 1999.

For the Nuclear Regulatory Commission.

Jack R. Strosnider,

Director, Division of Engineering, Office of Nuclear Reactor Regulation.

[FR Doc. 99–32190 Filed 12–10–99; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in Section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., Section 3221(c), the Railroad Retirement Board has determined that the excise tax imposed by such Section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning January 1, 2000, shall be at the rate of 26½ cents.

In accordance with directions in Section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning January 1, 2000, 38.7 percent of the taxes collected under Sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 61.3 percent of the taxes collected under such Sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under Section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: December 2, 1999.

By Authority of the Board.

Beatrice Ezerski,

Secretary of the Board.

[FR Doc. 99–32218 Filed 12–10–99; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

[Extension: Rule 34b–1; SEC File No. 270–305; OMB Control No. 3235–0346]

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, N.W, Washington, D.C. 20549.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*], the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 34b–1 Under the Investment Company Act of 1940, Sales Literature Deemed to be Misleading

Rule 34b–1 under the Investment Company Act of 1940 (''Investment Company Act'') [17 CFR 270.34b–1] governs sales material that accompanies or follows the delivery of a statutory prospectus (''sales literature'') Rule 34b–1 deems to be materially misleading any investment company sales literature, required to be filed with the Commission by section 24(b) of the Investment Company Act,[1] that includes any information that purports to show the investment performance of the fund unless it also includes performance data calculated in a manner prescribed by rule 482 under the Securities Act of 1933. Requiring the inclusion of such standardized performance data in sales literature is designed to prevent misleading performance claims by funds and to enable investors to make meaningful comparisons among fund performance claims.

It is estimated that approximately 545 respondents file five responses annually in compliance with rule 34b–1. The burden from rule 34b–1 requires approximately 2.4 hours per response resulting from creating the information required under rule 34b–1. The total burden hours for rule 34b–1 would be 6,540 hour per year in the aggregate. The estimated annual burden of 6,540 hours represents an increase of 3,096 hours over the prior estimate of 3,444 hours. The increase in burden hours is attributable to an increase in the number of respondents from 287 to 545.

The estimates of average burden hours are made solely or the purposes of the PRA and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms.

Written comments are invited on: (a) Whether the proposed collection information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549.

Dated: December 6, 1999.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–32211 Filed 12–10–99; 8:45 am]

BILLING CODE 8010–01–M

[1] Sales literature addressed to or intended for distribution to prospective investors shall be deemed filed with the Commission for purposes of Section 24(b) of the Investment Company Act upon filing with a national securities association registered under Section 15A of the Securities Exchange Act of 1934 that has adopted rules providing standards for the investment company advertising practices of its members and has established and implemented procedures to review that advertising. Rule 24b–3 under the Investment Company Act [17 CFR 270.24b–3].

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24187; File No. 812–11332]

SAFECO Life Insurance Company and SAFECO Life Deferred Variable Annuity Account

December 7, 1999.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an order pursuant to Section 26(b) of the Investment Company Act of 1940, as amended (''1940 Act'') approving the proposed substitution of securities.

SUMMARY OF APPLICATION: Applicants request an order approving the proposed substitution of shares of the Growth Portfolio, Northwest Portfolio, and Bond Portfolio of the SAFECO Resource Series Trust for shares of the Growth & Income Portfolio, Northwest Portfolio, and Income Portfolio of the Composite Deferred Series, Inc., respectively, each held by SAFECO Life Deferred Variable Annuity Account to support individual flexible premium deferred variable annuity contracts (the ''Contracts'') issued by SAFECO.

APPLICANTS: SAFECO Life Insurance Company (''SAFECO)'') and SAFECO Life Deferred Variable Annuity Account (''SAFECO Account'') (together, ''Applicants'').

FILING DATE: The application was filed on September 28, 1998, and amended and restated on June 17, 1999, October 19, 1999 and December 6, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 28, 1999, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Applicants, c/o William E. Crawford, Esq., SAFECO Life Insurance Company, 15411 N.E. 51st Street, Redmond, WA 98052.

FOR FURTHER INFORMATION CONTACT: Zandra Y. Bailes, Senior Counsel, or Susan M. Olson, Branch Chief, Office of Insurance Products, Division of Investment Management at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090)).

Applicants' Representations

1. SAFECO is a stock life insurance company organized under the laws of the state of Washington on January 23, 1957. SAFECO is a wholly owned subsidiary of SAFECO Corporation, a holding company whose subsidiaries are engaged primarily in insurance and financial service businesses. SAFECO writes individual and group life, accident and health insurance and annuities. SAFECO is licensed to do business in the District of Columbia and all states except New York.

2. Effective December 31, 1997, SAFECO acquired WM Life Insurance Company (''WM Life''), and WM Life became a wholly owned subsidiary of SAFECO. WM Life was the depositor of WM Life Deferred Variable Annuity Account (''WM Life Account'') at the time WM Life was acquired by SAFECO. However, as of June 30, 1998, WM Life was merged into SAFECO, and WM Life ceased to exist as a separate insurance company. SAFECO filed (1) an amendment to WM Life Account's registration statement on Form N–4 under the 1940 Act to reflect the renaming of WM Life Account as ''SAFECO Deferred Variable Annuity Account; '' and (2) a new registration statement on Form N–4 under the Securities Act of 1933 (''1933 Act'').

3. WM Life established the WM Life Account on December 23, 1986, as a segregated investment account under Arizona law. The WM Life Account was, and the SAFECO Account is, a ''separate account'' as defined by Rule 0–1(e) under the 1940 Act, and is registered under the 1940 Act as a unit investment trust (File No. 811–4961). The SAFECO Account's assets support the Contracts, and the Contracts have been registered under the 1933 Act (File No. 33–11011).

4. The SAFECO Account currently is divided into six active subaccounts, three of which invest solely in corresponding portfolios (each, a ''Portfolio'') of the Composite Deferred Series, Inc. (''Composite Fund''), and three of which invest in corresponding Portfolios of the Scudder Variable Life Investment Fund. The three Portfolios of the Composite Fund available through the SAFECO Account are the only Portfolios involved in the substitutions discussed in the Application.

5. The Composite Fund was incorporated under the laws of the state of Washington on December 8, 1986, and is registered under the 1940 Act as an open-end management investment company (File No. 811–4962). The Composite Fund is a series investment company as defined by rule 189f–2 under the 1940 Act and currently comprises three Portfolios: Growth & Income Portfolio, Northwest Portfolio; and Income Portfolio. The Composite Fund has registered shares issued in connection with these Portfolios under the 1933 Act. WM Advisors, Inc. (''Adviser'') (which was an affiliate of WM Life and is now an affiliate of SAFECO) is the investment manager of the Composite Fund.

6. SAFECO Resource Series Trust (''Trust'') was organized as a Delaware business trust on May 13, 1993. The Trust is registered under the 1940 Act as an open-end management investment company (File No. 811–4717). The Trust is a series investment company as defined by Rule 18f-2 under the 1940 Act and currently comprises six series, three of which are involved in the substitutions discussed in the application: Growth Portfolio; Northwest Portfolio; and Bond Portfolio. The Trust has registered shares issued in connection with these series under the 1933 Act. SAFECO Asset Management Company an affiliate of SAFECO, serves as the investment manager of each series of the Trust.

7. The Contracts are flexible premium deferred variable annuity contracts. The Contracts originally were issued by WM Life. However, SAFECO became the depositor for the Contracts following the June 30, 1998 merger of WM Life into SAFECO, and the intact transfer of the WM Life Account to SAFECO.

8. The Contracts permit an unlimited number of transfers to be made from the subaccounts of the applicable separate account at any time before the annuity date. No charge is imposed on any transfer. Each transfer must be at least $1,000 or the entire amount in that subaccount if less than $1,000. No transfers are permitted after the annuity date.

9. SAFECO, on its own behalf and on behalf of the SAFECO Account, proposes to make certain substitutions of shares held in the SAFECO Account. SAFECO proposes to substitute: (1) shares of the Trust's Growth Portfolio for shares of the Composite Fund's Growth & Income Portfolio, (2) shares of the Trust's Northwest Portfolio for

shares of the Composite Fund's Northwest Portfolio, and (3) shares of the Trust's Bond Portfolio for shares of the Composite Fund's Income Portfolio.

10. The proposed substitutions are principally the result of the acquisition by SAFECO of WM Life whereby WM Life became a wholly owned subsidiary of SAFECO. SAFECO is seeking to consolidate the assets of the Composite Fund with those of other management investment company portfolios having substantially identical or very similar investment objectives that are advised by affiliated persons of SAFECO. SAFECO believes that the consolidation will simplify the structure of the mutual fund portfolios, and that the reduction in duplicative portfolios will provide better service and less confusion to Contract owners.

11. Applicants represent that the assets of the Composite Fund would remain stagnant or decline because the shares of the Composite Fund are available only through purchase of the Contracts, and no new Contracts are being sold by WM Life. By contrast, shares of the Trust are sold to other separate accounts of SAFECO and may be sold to other life insurance companies and qualified retirement plans. Applicants state that the assets of the Trust are likely to increase, which will likely result in lower expenses to Contract owners in the long run.

12. Applicants represent that the Composite Fund's Portfolios have substantially similar investment objectives as the Trust's Portfolios. The Trust's Northwest Portfolio and the Composite Fund's Northwest portfolio each seek capital growth by investing in securities of companies located in the same five states: Alaska, Idaho, Montana, Oregon and Washington. The Trust's Growth Portfolio and the Composite Fund's Growth & Income Portfolio each seek capital growth and current income by investing in a diversified pool of common stocks, although each may also invest in bonds and preferred stocks. The Trust's Bond Portfolio and the Composite Fund's Income Portfolio each seek to provide a high level of current income that is consistent with capital stability by investing primarily in debt securities.

13. Applicants represent that the Trust's Portfolios will all have higher expense ratios than the Composite's Portfolios. Applicants state that the pro forma expense ratio for the Growth Portfolios is .77%, while the expense ratio for the Composite Fund's Growth & Income Portfolio during 1998 was .60%. Applicants state that the pro forma expense ratio for the Trust's Northwest Portfolio will be .89% while 1998's expense ratio for the Composite Fund's Northwest Portfolio was .66%. In addition, Applicants state that the pro forma expense ratio for the Bond Portfolio is .89%, while the expense ratio for the Composite Fund's Income Portfolio during 1998 was .67%.

14. To prevent current Contract owners with values allocated to the Composite Fund Portfolios from paying higher expenses resulting from the substitution, SAFECO will reduce the mortality and expense risk charge at the separate account level for such Contract owners to the extent necessary to offset the amount by which each Trust series' expense ratio after the substitution exceeds the 1998 expense ratio level of the corresponding Composite Fund Portfolio. Applicants represent, therefore, that the total expenses borne by these Contract owners—the sum of the mortality and expense risk charge and the Trust series expenses—will remain the same and not increase as a result of the substitution. SAFECO guarantees that this mortality and expense risk charge deduction will remain in effect until January 1, 2003. By this date, the majority of Contract owners with values allocated to the Composite Fund Portfolios will no longer be subject to the contingent deferred sales charge on withdrawals. After that date, SAFECO will waive any remaining contingent deferred sales charges applicable to the Contracts.

15. SAFECO believes that by making the proposed substitutions, it can continue to serve the interests of owners of the Contracts in that: (1) Substituting certain portfolios of the Trust will allow owners of the Contracts to continue to participate in underlying funds having substantially identical or substantially similar investment objectives as the Portfolios of the Composite Fund currently available through the SAFECO Account; and (2) the owners of the Contracts will continue to receive the benefits of professional portfolio management while increasing SAFECO's ability (a) to control the expenses associated with the management and administration of the portfolios available through the SAFECO Account, and (b) to ensure quality and timeliness of services.

16. The registration statement for the SAFECO Account and the Contract discloses that SAFECO intends to eliminate the Portfolios of the Composite Fund and substitute other mutual fund portfolios in the near future. If the Commission approves the proposed substitution, SAFECO will prepare a supplement to the prospectus for the Contracts and the SAFECO Account, informing all Contract owners that on the date of the proposed substitution, the specified Trust series will replace the Composite Fund Portfolios as the underlying investments for the subaccounts. The supplement also will (1) remind Contract owners that they may transfer Contract value in any one of the affected subaccounts to another subaccount(s) free of charge and (2) describe the mortality and expense risk charge reduction that SAFECO will provide to Contract owners with values allocated to the subaccounts currently investing in Composite Fund Portfolios.

17. The proposed substitutions will take place at relative net asset values with no change in the amount of any owner's Contract or Contract value or in the dollar value of his or her investment in the separate account. Contract owners will not incur any fees or charges as a result of the proposed substitutions nor will their rights or SAFECO's obligations under the Contract be altered in any way. SAFECO will pay all expenses incurred in connection with the proposed substitutions, including legal, accounting, and other fees and expenses. The proposed substitutions will not cause the Contract or SAFECO Account fees and charges currently being paid by existing Contract owners to be greater after the proposed substitutions than before the proposed substitutions. In addition, neither the proposed substitutions nor the reduction in the mortality and expense risk charge at the separate account level will impose any tax liability on Contract owners.

18. In addition to the prospectus supplement to be distributed to owners of Contracts, within five days after the proposed substitutions, any Contract owners who were affected by the substitution will be sent a written notice informing them that the substitutions took place and reminding them of their transfer rights.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order pursuant to Section 26(b) of the 1940 Act approving the substitutions by SAFECO of shares held by corresponding subaccounts of the SAFECO Account as follows: (1) Shares of the Trust's Growth Portfolio for shares of the Composite Fund's Growth & Income Portfolio; (2) shares of the Trust's Northwest Portfolio for shares of the Composite Fund's Northwest Portfolio; and (3) shares of the Trust's Bond Portfolio for shares of the Composite Fund's Income Portfolio.

2. Section 26(b) of the 1940 Act requires the depositor of a registered unit investment trust holding the securities of a single issuer to receive

Commission approval before substituting the securities held by the trust. Section 26(b) also states that the Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. The Contract expressly reserves to the depositor (originally WM Life) the right, subject to compliance with applicable law, to substitute shares of another open-end registered investment company for shares of an open-end registered investment company held by a subaccount of the separate account. Applicants represent that the statement of additional information for the Contract and the SAFECO Account contains appropriate disclosure of this right.

4. This right of substitution was reserved to protect the depositor and the Contract owners in situations where either might be harmed or disadvantaged by circumstances surrounding the issuer of the shares held by one or more of the depositor's separate accounts, and to afford the opportunity to replace such shares where to do so could benefit the depositor and Contract owners.

5. Applicants represent that the Trust's Growth Portfolio, Northwest Portfolio, and Bond Portfolio are each suitable and appropriate investment vehicles for Contract owners. The investment objectives of each of the Trust Portfolios involved in the substitution are substantially similar to the investment objectives of the corresponding Composite Fund Portfolio.

6. Applicants anticipate that Contract owners will be at least as well off with the proposed array of investment options offered after the proposed substitutions as they have been with the array of investment options offered prior to the substitutions. The proposed substitutions retain investment flexibility for Contract owners, which is a central feature of the Contracts. All Contract owners will be permitted to allocate purchase payments to and transfer Contract values among and between the same number of investment subaccounts (with substantially the same investment objectives) as they could before the proposed substitutions.

7. Applicants assert that none of the proposed substitutions is the type of substitution which Section 26(b) was designed to prevent. Unlike traditional unit investment trusts where a depositor could only substitute an investment security in a manner which permanently affected all the investors in the trust, the Contract provides each Contract owner with the right to exercise his or her own judgment and transfer account values into other investment subaccounts. Moreover, SAFECO will offer Contract owners the opportunity to transfer amounts out of the affected subaccounts into any of the remaining subaccounts without cost or other disadvantage. The proposed substitutions, therefore will not result in the type of costly forced redemption which Section 26(b) was designed to prevent.

8. In addition, the proposed substitutions are unlike the type of substitution which Section 26(b) was designed to prevent in that by purchasing a Contract, Contract owners select much more than a particular investment company in which to invest their Contract values. They also select the specific type of insurance coverage offered under their Contract as well as numerous other rights and privileges set forth in the Contract. Contract owners may also have considered the depositor's size, financial condition, type and its reputation for service in selecting their Contract. None of these factors will diminish as a result of the proposed substitutions.

9. Finally, whereas the assets of the Composite Fund can be expected to remain stagnant or decline since no new Contracts are being sold, the proposed substitutions will allow Contract owners to participate in mutual fund portfolios that are being actively sold through other separate accounts, and therefore the assets of the Trust are likely to increase.

Conclusion

Applicants submit that, for all the reasons stated above, the proposed substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–32212 Filed 12–10–99; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–6605]

Secretarial Authorization for Certain Members and Employees of the U.S. Coast Guard to Serve on the Board of Control, Coast Guard Mutual Assistance

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: The Commandant of the Coast Guard, exercising authority delegated by the Secretary of Transportation, has authorized certain military members and employees to serve, without compensation, on the Board of Control of Coast Guard Mutual Assistance, a non-federal military-welfare entity. He has so authorized them for the purpose of providing coordination, oversight, and advice to the management of the Coast Guard's Mutual Assistance Program. Participation of the designated officials in the activities of Coast Guard Mutual Assistance will not extend to participation in day-to-day operations.

DISCUSSION: The Secretary of Transportation, through the Commandant, has authorized the following members and employees of the Coast Guard to serve, without compensation, on the Board of Control of Coast Guard Mutual Assistance (see 10 U.S.C. 1033 and 1589). *Officers:* Commandant of the Coast Guard, Admiral James M. Loy, USCG (President); Assistant Commandant for Human Resources, Rear Admiral Fred L. Ames, USCG (Executive Vice President); Captain James E. Evans, USCG (Second Vice President); Lieutenant Commander Barry A. Compagnoni, USCG (Treasurer); Chief Warrant Officer Roberto Ruiz, USCG (Secretary). *Members:* Commander James D. Bjostad, USCG (Commissioned Officer); Lieutenant Commander Barry A. Compagnoni, USCG (Commissioned Officer); Chief Warrant Officer Robert H. Gitschier, USCG (RET), (Retired Member); Master Chief Petty Officer Vincent W. Patton, USCG (Master Chief Petty Officer of the Coast Guard); Master Chief Petty Officer Mark A. Lewack, USCG (Enlisted, E–7 or above); Petty Officer First Class Petra A. Wolford, USCG (Enlisted, E–6 or below); Petty Officer First Class Scott C. Tull, USCG (Enlisted, E–6 or below); Ms. Maureen Melton (Civilian employee); Mrs. Jennifer Rechsteiner (Civilian employee); Lieutenant Commander Charles E. Martin, USCG (RET) (USCG Auxiliary); Captain Francis C. Buckley, USCG (Reserve); Chief Warrant Officer

Roberto Ruiz, USCG (Medical and TRICARE Specialist); Captain Ruth I. Torres, USPHS (Family Support Specialist); Chief Petty Officer Trudy D. Douglas, USCG (Alternate: MCPO–CG); Chief Petty Officer Keith W. Denman, USCG (Alternate: CPO); Petty Officer First Class Marion L. White, USCG (Alternate: Enlisted, E–6 or below).

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, contact Mr. Carl Mursh, Coast Guard Mutual Assistance, (202) 267–1682.

[**Authority:** 10 U.S.C. 1033 and 1589; 49 CFR 1.47(ooo)]

Dated: December 2, 1999.

F.L. Ames,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Human Resources.

[FR Doc. 99–32201 Filed 12–10–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Communications/Surveillance Operational Implementation Team (C/SOIT) Hosted Forum on the Operational Implementation of Satellite Communications and Data Link Technologies for Aviation Applications in the National Airspace System (NAS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Meeting.

SUMMARY: The FAA C/SOIT will be hosting a 3-day public forum to discuss the FAA's Controller-Pilot Data Link Communication (CPDLC) program. Formal presentations will be provided followed by a question and answer session. Working group sessions will be held to discuss acceptable programs and requirements for CPDLC training and approval and operational implementation of CPDLC and High Frequency Data Link (HFDL). Those who plan to attend are invited to submit proposed discussion topics. Requests to make presentations to the assembled forum should be made to the **FOR FURTHER INFORMATION CONTACT** listed.

DATES: January 11–13, 2000, 8:30 a.m.–5:00 p.m.

ADDRESSES: Holiday Inn Rosslyn WestPark Hotel, 1900 Fort Myer Drive, Arlington, VA, Telephone (703) 807–2000.

FOR FURTHER INFORMATION CONTACT: Registration and submission of suggested discussion topics may be made to Ms. Dottie Wilkins, telephone (202) 484–2535, fax (202) 484–1510 or email at dottie.ctr.wilkins@faa.gov.

SUPPLEMENTARY INFORMATION: Open to the aviation industry with attendance limited to space available. Participants are required to register their intent to attend this meeting by December 10, 1999. Names, affiliations, addresses, telephone and facsimile numbers should be sent to the **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on December 9, 1999.

Donald W. Streeter,

C/SOIT Co-Chairman.

[FR Doc. 99–32109 Filed 12–10–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In November 1999, there were seven applications approved. This notice also includes information on two applications, one approved in February 1999 and the other approved in June 1999, inadvertently left off the February 1999 and June 1999 notices, respectively. Additionally, nine approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Duluth Airport Authority, Duluth, Minnesota.

Application Number: 99–03–C–00–DLH.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $561,879.

Earliest Charge Effective Date: May 1, 1999.

Estimated Charge Expiration Date: July 1, 2001.

Class of Air Carrier Not Required To Collect PFC's: Non-scheduled Part 135 air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Duluth International Airport (DLH).

Brief Description of Projects Approved for Collection at DLH and Use at DLH:

Acquire snow removal equipment.

Develop airport noise overlay zone.

Energy improvements to terminal building heating, ventilation, and air conditioning system.

PFC consultation fees.

Brief Description of Project Partially Approved for Collection at DLH and Use at Duluth Sky Harbor Airport:

Safety/security improvements.

Determination: Partially approved. The installation of security cameras and a card operated vehicle gate and door are determined to be ineligible under paragraphs 563 and 569(c) of FAA Order 5100.38A, Airport Improvement Program (AIP) Handbook (October 24, 1989). In addition, the acquisition of a 14-foot rescue/recovery boat is determined to be ineligible in accordance with paragraph 562(d) of FAA Order 5100.38A, AIP Handbook (October 24, 1989).

Decision Date: February 2, 1999.

FOR FURTHER INFORMATION CONTACT: Gordon Nelson, Minneapolis Airport district Office, (612) 713–4358.

Public Agency: MBS International Airport Commission, Saginaw, Michigan.

Application Number: 99–03–C–00–MBS.

Application Type: Impose and use a PFC.

PFC Level: $3:00.

Total PFC Revenue Approved in this Decision: $4,234,047.

Earliest Charge Effective Date: January 1, 2000.

Estimated Charge Expiration Date: September 1, 2005.

Class of Air Carrier Not Required To Collect PFC's:

Part 135 air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at MBS International Airport.

Brief Description of Projects Approved for Collection And Use:

Acquire snow removal equipment (plow truck with sand spreader).

Improve airport drainage (phase I).

Replace primary underground conduit (telephone and electrical).

PFC application preparation.

Year 2000 computer testing.

Master plan update.
Improve airport drainage (phase II).
Rehabiliate snow removal equipment/aircraft rescue and firefighting access road.
Acquire snow removal equipment (plow truck with dump box).
Rehabilitate airport entrance drive.
Rehabilitate service drive.
Construct perimeter fence.
Rehabilitate taxiways B, C, D, G, and H.
Rehabilitate runway 5/23.
Rehabilitate runway 14/32.
Rehabilitate taxiway A and G1.
Acquire snow removal equipment (snow blower).
Decision Date: June 9, 1999.

FOR FURTHER INFORMATION CONTACT: Jon Gilbert, Detroit Airports District Office, (734) 487–7281.

Public Agency: County of Chatauqua, Jamestown, New York.
Application Number: 99–03–C–00–JHW.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in this Decision: $141,272.
Earliest Charge Effective Date: February 1, 2000.
Estimated Charge Expiration Date: August 1, 2002.
Class of Air Carriers not Required to Collect PFC's:
Air taxi and charter carriers filing FAA Form 1800–31. *Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Chatauqua County/Jamestown Airport.
Brief Description of Projects Approved for Collection and Use:
Deer fencing.
Overlay taxiway D.
Overlay runway 13/31.
Decision Date: November 1, 1999.

FOR FURTHER INFORMATION CONTACT: John Moretto, New York Airports District Office, (516) 227–3806.

Public Agency: County of Dane, Madison, Wisconsin.
Application Number: 99–04–C–00–MSN.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $9,716,667.
Earliest Charge Effective Date: December 1, 2001.
Estimated Charge Expiration Date: December 1, 2006.
Class of Air Carriers Not Required to Collect PFC'S: On demand Part 135 air taxi/commercial operators.
Determination: Approved. Based on the information in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Dane County Regional Airport.
Brief Description of Projects Approved For Collection And Use:
Reconstruct runway 18/36.
Airport security system improvements.
International Lane relocation.
Land acquisition.
Decision Date: November 1, 1999.

FOR FURTHER INFORMATION CONTACT: Sandra E. Depottey, Minneapolis Airports District Office, (612) 713–4363.

Public Agency: City of Chicago, Department of Aviation, Chicago, Illinois.
Application Number: 99–11–C–00–ORD.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $1,500,000.
Earliest Charge Effective Date: October 1, 2017.
Estimated Charge Expiration Date: November 1, 2017.
Class of Air Carriers Not Required to Collect PFC's: Air taxi operators.
Determination: Approved. Based on the information in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Chicago O'Hare International Airport (ORD).
Brief Description of Projects Approved For Collection at ORD and Use at Gary/Chicago Airport: Acquire 1,500 gallon aircraft rescue and firefighting (ARFF) vehicle.
Terminal renovation phase II.
Decision Date: November 16, 1999.

FOR FURTHER INFORMATION CONTACT: Philip M. Smithmeyer, Chicago Airports District Office, (847) 294–7335.

Public Agency: City of Saint Cloud, Minnesota.
Application Number: 99–01–C–00–STC.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $1,147,578.
Earliest Charge Effective Date: February 1, 2000.
Estimated Charge Expiration Date: October 1, 2019.
Class of Air Carriers Not Required to Collect PFC'S: Air ambulance operators.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Saint Cloud Regional Airport.
Brief Description of projects approved for collection and use:
Electrical revisions.
Airline terminal design.
Airport issues study.
New airline terminal building.
Electrical improvements.
ARFF vehicle plus braking meter.
Snow removal equipment (truck and plow) with radios.
Security fencing.
Airport master plan update.
ARFF building construction.
PFC application administration costs.
Brief Description of Project Withdrawn: Snow removal equipment building addition.
Determination: This project was withdrawn by the public agency in its letter dated November 5, 1999. Therefore, the FAA will not rule on this project in this decision.
Decision Date: November 18, 1999.

FOR FURTHER INFORMATION CONTACT: Robert A. Huber, Minneapolis Airports District Office, (612) 713–4357.

Public Agency: City of San Jose, California.
Application Number: 99–07–C–00–SJC.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $12,950,000.
Earliest Charge Effective Date: October 1, 2001.
Estimated Charge Expiration Date: July 1, 2002.
Class of Air Carriers Not Required to Collect PFC's:
Air taxi/commercial operators filing FAA Form 1800–31.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at San Jose International Airport.
Brief Description of Projects Approved For Collection And Use:
Aircraft noise and operations management system.
Emergency command post relocation and equipment.
Airfield lighting control system.
Ewert Road improvements.
Skyport access to Airport Boulevard.
Taxiway Y pavement reconstruction.
Transportation access plan, terminal area concept plan, and terminal C interim upgrade plan.

Terminal C ramp lighting improvement.

Acoustical treatment of four eligible schools

Brief Description of Project Disapproved: Police building improvement to support canine unit.

Determination: Disapproved. This project is not eligible in accordance with either paragraph 563 of FAA Order 5100.38A, AIP Handbook (October 24, 1989) or Program Guidance Letter 99–1. Therefore, the project is not PFC eligible and was disapproved.

Decision Date: November 24, 1999.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, San Francisco Airports District Office, (650) 876–2806.

Public Agency: City of Pullman, Washington.

Application Number: 99–02–C–00–PUW.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $714,731.

Earliest Charge Effective Date: February 1, 2000.

Estimated Charge Expiration Date: March 1, 2005.

Class of Air Carriers Not Required To Collect PFC's:

Air taxi/commercial operators who conduct operations in air commerce carrying persons for compensation or hire.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Pullman-Moscow Regional Airport.

Brief Description of Projects Approved For Collection And Use:

Develop storm water pollution prevention plan (SWPPP).

Expand general aviation ramp.

Rehabilitate taxiway A and four connecting taxiways.

Rehabilitate ARFF building.

Purchase snow blower.

Airport drainage improvements-design and construction.

Purchase runway protection zone land.

SWPP update.

Install precision approach path indicator—runway 5/23.

Runway safety area grading improvements, runway 23.

Install runway end identifier lights at the approach end of runway 5, improve runway 5 safety area by installation of declared distance marking and lighting on runway 5 approach.

Purchase of emergency generator.

Ramp reconstruction-general aviation.

Wildlife/security fencing.

Connecting taxiway B rehabilitation.

New ARFF vehicle.

Brief Description of Projects Approved For Collection Only:

Purchase land leased from Washington State University.

Purchase new snow plow.

Rehabilitation terminal apron.

Rehabilitate runway 5/23.

Taxiway edge lighting.

Decision Date: November 24, 1999.

FOR FURTHER INFORMATION CONTACT: Mary E. Vargas, Seattle Airports District Office, (425) 227–2660.

Public Agency: County of Pitkin, Aspen, Colorado.

Application Number: 99–03–C–00–ASE.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $1,354,000.

Earliest Charge Effective Date: October 1, 2000.

Estimated Charge Expiration Date: May 1, 2003.

Class of Air Carriers not Required to Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Aspen/Pitkin County Airport.

Brief Description of Projects Approved For Collection And Use:

Airport frontage road overlay.

Land acquisition.

Brief Description of Project Disapproved: Purchase airport sweeper.

Determination: Disapproved. The FAA has determined that the acquisition of a regenerative air sweeper for removal of foreign objects and debris is ineligible in accordance with Program Guidance Letter 91–8.1.

Decision Date: November 29, 1999.

FOR FURTHER INFORMATION CONTACT: Christopher J. Schaffer, Denver Airports District Office, (303) 342–1258.

AMENDMENTS TO PFC APPROVALS

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
92–01–C–04–TLH Tallahassee, FL	11/02/99	$7,567,709	$7,466,447	07/01/98	06/01/98
93–02–U–02–TLH Tallahassee, FL	11/02/99	NA	NA	NA	NA
98–03–C–01–TLH Tallahassee, FL	11/02/99	5,988,942	6,012,047	08/01/03	04/01/02
97–06–I–02–BDL Windsor Locks, CT	11/05/99	14,000,000	14,659,913	06/01/00	07/01/00
99–08–U–01–BDL Windsor Locks, CT	11/05/99	NA	NA	NA	NA
93–01–C–02–JAN Jackson, MS	11/05/99	6,237,459	6,238,505	06/01/98	06/01/98
94–01–C–02–BOI Boise, ID	11/08/99	9,651,628	9,650,453	11/01/97	11/01/97
93–01–C–01–SEA Seattle, WA	11/10/99	28,847,488	27,911,096	01/01/94	01/01/94
95–01–C–02–LYH Lynchburg, VA	11/016/99	515,216	296,723	07/28/98	07/28/98

Issued in Washington, DC, on December 7, 1999.

Eric Gabler,

Manager, Passenger Facility Charge Branch.

[FR Doc. 99–32200 Filed 12–10–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. Marad–1999–6615]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before February 11, 2000.

FOR FURTHER INFORMATION CONTACT: Rebecca M. Boyd, MAR 560, Maritime Administration, 400 Seventh St., S.W., Room 8117, Washington, D.C. 20590. Telephone: 202–366–5870, or FAX 202–366–7901.

Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Records Retention Schedule.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0501.

Form Numbers: None.

Expiration Date of Approval: August 31, 2000.

Summary of Collection of Information: Section 801, Merchant Marine Act, 1936, as amended, requires retention of Construction Differential Subsidy (CDS) or Operating Differential Subsidy (ODS) records. The records are required to be retained to permit proper audit of pertinent records at the conclusion of an ODS or CDS contract.

Need and Use of the Information: The information will be used to audit pertinent records at the conclusion of a contract when the contractor was receiving financial assistance from the government.

Description of Respondents: U.S. shipping companies.

Annual Responses: 3.

Annual Burden: 50 hours each or 150 hours total.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, D.C. 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit.* Specifically address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility; accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT, Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

By Order of the Maritime Administrator.

Dated: December 8, 1999.

Joel C. Richard,

Secretary.

[FR Doc. 99–32219 Filed 12–10–99; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket No NHTSA–99–6519]

Reports, Forms, and Record Keeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal Agency can collect certain information from the public, it must receive approval from the Office of Management and the Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal Agencies must solicit public comment on proposed information collections, including extensions and reinstatements of previously approved collections. This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before February 11, 2000.

ADDRESSES: Comments must refer to the docket notice number cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested, but not required that two copies of the comment be provided. The Docket section is open weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Marvin Levy, Ph.D., Contracting Officer's Technical Representative, Office of Research and Traffic Records (NTS–31), Washington, DC 20590, telephone (202) 366–5597.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing for a 60-day comment period and otherwise consult with affected agencies and members of the public concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methods and assumptions;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In response to these requirements, NHTSA asks for public comment on the following proposed collection of information:

Five State Survey of Alcohol Targets of Opportunity

Type of Request: New information collection requirement.

OMB Clearance Number: None.

Form Number: This collection of information uses no standard forms.

Requested expiration date of approval: February 28, 2003.

Summary of the Collection of Information

The Partners in Progress goal is to reduce the number of alcohol related fatalities from 15,935, in 1998, to 11,000 by the year 2005. In support of this goal, five states were awarded cooperative agreements by NHTSA to demonstrate and evaluate the effectiveness of traffic safety programs that combine increased law enforcement efforts with substantial publicity about these programs. These states were selected because of their potential for reducing the substantial

number or percentage of alcohol related fatalities occurring each year within their state.

The objective of this survey is to determine the extent to which these five programs impact the awareness, attitudes, and driving behavior of motorists. It is anticipated that changes in enforcement levels should be reflected by changes in driver awareness, attitudes and behavior. For example, a state that doubles or triples their alcohol enforcement activities and provides substantial publicity might expect that respondents report a greater degree of awareness of these efforts as compared to before the program began. It may be expected that respondents would report they came in contact with law enforcement more frequently and drive after drinking less often once the program began. In addition, the survey will provide information on driver awareness and acceptability of specific enforcement techniques being used as well as data regarding a new national alcohol media campaign called ''You drink and drive, You Lose''. The information to be collected by this survey is not available to NHTSA through any other source.

Within each state, the survey will be administered in three waves (prior to the intervention effort, at the mid-point, and at the end the effort) by telephone to a probability sample of the driving age public (aged 16 years or older as of their last birthday). Participation by respondents is strictly voluntary. The interview is anticipated to average 8–10 minutes in length. Interviewers will use computer assisted telephone interviewing to reduce survey administration time and to minimize data collection errors. A Spanish-language questionnaire and bi-lingual interviewers will be used to reduce language barriers to participation. All respondents' results will remain anonymous and completely confidential. Participant names and telephone numbers used to reach the respondents are separated from the data records prior to their entry into the analytical database.

Description of the Need for the Information and Proposed Use of the Information

More than 305,000 persons were reported injured and nearly 16,000 persons died in alcohol-related motor vehicle crashes during 1998 (Traffic Safety Facts: 1998, NHTSA-National Center for Statistics and Analysis). NHTSA is committed to the development of effective programs to reduce the incidence of these crashes. Recently, NHTSA awarded cooperative agreements, valued at approximately $1,000,000 each, to five states—Pennsylvania, Georgia, Louisiana, Tennessee, and Texas. Each state is responsible for implementing the enforcement and publicity programs and conducting both process and impact evaluations. Data to be collected include number and types of police stops made, and changes in alcohol-related violations and crashes. In order to reduce the work requirements for each state and to create sets of survey data that can be readily compared among the states, a separate award was made to a survey firm having expertise in conducting random telephone surveys. Thus, the survey data to be collected comprise only one part of the entire data set that will be assessed. The entire data set will be used to properly plan and evaluate new enforcement programs directed at reducing alcohol-impaired driving. States found to have implemented effective programs in countering the driving after drinking problem will prepare a Best Practices Guide that highlights the major features of their programs. These Guides will be disseminated among states that want to implement an improved alcohol enforcement program.

The findings from this proposed data collection will assist NHTSA in addressing the problem of alcohol-impaired driving and in formulating programs and recommendations to Congress. NHTSA will use the findings to help focus current programs and activities to achieve the greatest benefit, to develop new programs to decrease the likelihood of drinking and driving behaviors, and to provide informational support to states, localities, and law enforcement agencies that will aid them in their efforts to reduce drinking and driving crashes and injuries. It should be noted that during the past decade NHTSA has conducted surveys on drinking and driving attitudes and behavior but these were from nationally represented samples and not related to specific statewide enforcement activities. Also, some survey data about an enforcement effort were collected years ago in one of the targeted states—Tennessee—but these data cannot be used within the context of the present study.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)

Under this proposed collection, a telephone interview averaging approximately 8–10 minutes in length would be administered to each of 1,000 randomly selected members of the general public age 16 and older, in each of the five states in this study, at three different times over an 18 month period. A total of 15,000 individuals will be interviewed over the course of this study. Interviews would be conducted with persons at residential phone numbers selected using random digit dialing. No more than one respondent per household would be selected, and each sample member would complete just one interview. Businesses are ineligible for the sample and would be not be interviewed. After each wave is completed and the data analyzed, the findings will be disseminated to each state for review.

Estimate of the Total Annual Reporting and Record Keeping Burden Resulting From the Collection of Information

NHTSA estimates that respondents in the sample would require an average of 8.5 minutes to complete the telephone interview. Thus, the number of estimated reporting burden on the general public would be a total of 2,125 hours for all three waves of the proposed survey. The respondents would not incur any reporting or record keeping cost from the information collection.

Rose A. McMurray,

Associate Administrator, Traffic Safety Programs.

[FR Doc. 99–32105 Filed 12–10–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6598]

Notice of Receipt of Petition for Decision That Nonconforming 1995–1996 Audi Cabriolet Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1995–1996 Audi Cabriolet 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 1995–1996 Audi Cabriolet 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 January 12, 2000.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. (Docket hours are from 9 am to 5 pm).

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether 1995–1996 Audi Cabriolet passenger cars are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1995–1996 Audi Cabriolet 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 1995–1996 Audi Cabriolet 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.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1995–1996 Audi Cabriolet 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 1995–1996 Audi Cabriolet 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*, and 302 *Flammability of Interior Materials.*

Petitioner states that the vehicles also comply with the Bumper Standard found at 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 a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer to show distance in miles and speed in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) Installation of U.S.-model headlamp assemblies; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies; (d) installation of a high mounted stop lamp if the vehicle is not already so equipped.

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 and a warning buzzer microswitch in the steering lock assembly.

Standard No. 118 *Power Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a U.S.-model seat belt in the driver's position, or a belt webbing actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch actuated seat belt warning lamp and buzzer; (c) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components on vehicles that are not already so equipped. The petitioner states that the vehicles are equipped with combination lap and shoulder belts that adjust by means of an automatic retractor and release by means of a single push button at the front outboard seating positions, with combination lap and shoulder restraints that release by means of a single push button at the rear outboard seating positions, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* Installation of reinforcing door beams.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line.

The petitioner also states that all vehicles will be inspected prior to importation to ensure that they are equipped with anti-theft devices in compliance with the Theft Prevention Standard found in 49 CFR part 541 and modified if necessary.

The petitioner also states that a vehicle identification plate must be affixed to the vehicle to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. (Docket hours are from 9 am to 5 pm). It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the

docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 8, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–32204 Filed 12–10–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6601]

Notice of Receipt of Petition for Decision That Nonconforming 1990–1991 Toyota MR2 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1990–1991 Toyota MR2 Passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1990–1991 Toyota MR2 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 January 12, 2000.

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**.

G&K Automotive Conversion, Inc. of Santa Ana, California (G&K) (Registered Importer 90–007) has petitioned NHTSA to decide whether 1990–1991 Toyota MR2 passenger cars are eligible for importation into the United States. The vehicles which G&K believes are substantially similar are 1990–1991 Toyota MR2 passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Toyota Motor Corporation, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1990–1991 Toyota MR2 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.

G&K submitted information with its petition intended to demonstrate that non-U.S. certified 1990–1991 Toyota MR2 4–Door 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 1990–1991 Toyota MR2 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,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 118 *Power Window Systems,* 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,* and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that non-U.S. certified 1990–1991 Toyota MR2 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) Installation of a seat belt warning lamp that displays the required seat belt symbol; (b) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) Installation of U.S.-model headlamp assemblies; (b) installation of U.S.-model front sidemarkers; (c) installation of U.S.-model taillamp assemblies; (d) installation of a high mounted stop lamp on vehicles that are not already so equipped.

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. 208 *Occupant Crash Protection:* (a) Installation of a seat belt warning buzzer; (b) installation of a driver's side air bag and knee bolster, identical to those installed on the vehicle's U.S. certified counterpart. The petitioner states that the vehicles are equipped with Type II seat belts in the front outboard designated seating positions, which are the only seating positions in the vehicle.

Standard No. 214 *Side Impact Protection:* Installation of U.S.-model

door beams on vehicles that are not already so equipped.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner states that prior to importation, the vehicle's vehicle identification number (VIN) will be inscribed on 14 major vehicle parts and a theft prevention certification label will be affixed to the vehicle to comply with the Theft Prevention Standard found in 49 CFR part 541.

The petitioner also states that a VIN plate must be affixed to the vehicle so that it can be read from the left windshield pillar, and a VIN reference label must be affixed to the edge of the door or to the latch post nearest the driver, 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 Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 8, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–32205 Filed 12–10–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Office of Motor Carrier Safety

[OMCS Docket No. 99–5473 (formerly FHWA Docket No. 99–5473)]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Office of Motor Carrier Safety (OMCS), DOT.

ACTION: Notice of final disposition.

SUMMARY: The OMCS announces its decision to exempt James F. Durham from the vision requirement in 49 CFR 391.41(b)(10).

DATES: December 13, 1999.

FOR FURTHER INFORMATION CONTACT: For information about the vision exemptions in this notice, Ms. Sandra Zywokarte, Office of Motor Carrier Safety, (202) 366–2987; for information about legal issues related to this notice, Ms. Judith Rutledge, Office of the Chief Counsel, (202) 366–0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: http://www.access.gpo.gov/nara.

Background

On May 18, 1999, the FHWA published notice of its preliminary determination to grant Mr. Durham an exemption from the vision standard applicable to drivers of commercial motor vehicles (CMVs) in interstate commerce (64 FR 27025). We refer readers to that notice for the history of his application. Two public comments were received and have been considered in our final decision to grant Mr. Duncan an exemption. On October 9, 1999, the Secretary of Transportation transferred the motor carrier safety functions performed by the FHWA to the Office of Motor Carrier Safety, a new office created in the Department of Transportation. This transfer was performed pursuant to section 338 of the Department of Transportation and Related Agencies Appropriations Act, FY 2000, Public Law 106–69, 113 Stat. 986, as amended by Public Law 106–73, 113 Stat. 1046, As a result of the transfer of functions, the OMCS now administers the driver qualification standards in 49 CFR part 391 and processes requests for exemptions from the vision standard under 49 U.S.C. 31315 and 31136(e). Accordingly, an OMCS docket number has been assigned to this proceeding.

Mr. Durham's Vision and Driving Experience

The vision requirement in 49 CFR 391.41(b)(10) provides:

> A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

Since 1992, we have undertaken studies to determine if this vision standard should be amended. The latest report from our medical panel recommends changing the field of vision standard from 70° to 120°, while leaving the visual acuity standard unchanged. (*See* Frank C. Berson, M.D., Mark C. Kuperwaser, M.D., Lloyd Paul Aiello, M.D., and James W. Rosenberg, M.D., ''Visual Requirements and Commercial Drivers,'' October 16, 1998, filed in Docket FHWA–98–4334). The panel's conclusion supports the OMCS's view that the present standard is reasonable and necessary as a general standard to ensure highway safety. The OMCS also recognizes that some drivers do not meet the vision standard but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely.

Mr. Durham falls into this category. He suffered a penetrating trauma to his right eye in 1992 that caused aphakia and corneal and retinal scarring. As a result, vision in his right eye has been reduced to finger counting. Uncorrected vision in his left eye falls well within the regulation's standard, however, and his doctor has stated that Mr. Durham is capable of performing tasks related to driving a CMV.

Mr. Durham's driving record supports the doctor's opinion. He drove a CMV for 4 years with his limited vision (1992 to April 1996) until his employer disqualified him for failing to meet the vision qualification standard. Following an 18-month break, he resumed driving part-time from October 1997 until July 1998, giving him about 5 years of experience driving with his vision

deficiency. Mr. Durham committed no traffic violations while driving with his limited vision and was involved in 1 non-injury accident. His driving performance supports the doctor's conclusion that Mr. Durham can safely perform the tasks related to driving a CMV.

Basis for Exemption Determination

Under revised 49 U.S.C. 31315 and 31136(e), the OMCA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, Mr. Durham cannot drive a CMV in interstate commerce. With the exemption, he can. Thus, our analysis focuses on whether allowing Mr. Durham to drive in interstate commerce will negatively affect the level of safety that presently exists.

To evaluate the effect of his exemption, the OMCS has considered not only the medical reports about Mr. Durham's vision but also his driving record and experience with the vision deficiency. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of accidents and traffic violations. Copies of the studies are filed in Docket No. FHWA–97–2625.

We believe we can properly apply the principle to monocular drivers because data from the vision waiver program clearly demonstrate the driving performance of monocular drivers in the program is better than that of all CMV drivers collectively. (See 61 FR 13338, March 26, 1996). That monocular drivers in the waiver program demonstrated their ability to drive safety supports a conclusion that other monocular drivers, with qualifications similar to those required by the waiver program, can also adapt to their vision deficiency and operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that accident rates for the same individual exposed to certain risks for two different time periods vary only slightly. (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting accident proneness from accident history coupled with other factors. These factors, such as age, sex, geographic location, mileage driven and conviction history, are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future accidents. (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall accident predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to Mr. Durham's record, we note that he has committed no traffic violations and had 1 non-preventable accident since 1994. The accident resulted in property damage but no bodily injury. Mr. Durham achieved this record of safety while driving with his vision impairment, demonstrating he has adapted his driving skills to accommodate his condition. Moreover, his clean driving record between October 1997 until July 1998 demonstrates that the break in driving experience from April 1996 to July 1997 did not diminish his driving skills. As Mr. Durham's driving history with his vision deficiency is a predictor of future performance, the OMCS concludes his ability to drive safely can be projected into the future. Consequently, the OMCS finds that exempting Mr. Durham from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the agency will grant the exemption for the 2-year period allowed by 49 U.S.C. 31315 and 31136(e).

We recognize that Mr. Durham's vision may change and affect his ability to operate a commercial vehicle as safely as in the past. As a condition of the exemption, therefore, the OMCS will impose requirements on his exemption consistent with the grandfathering provisions applied to drivers who participated in the agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in its driver qualification file, or keep a copy in his/her driver qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving so it may be presented to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

Advocate for Highway and Auto Safety (AHAS) filed two comments in this proceeding. Each comment was considered and is discussed below.

In its first submission filed on June 16, 1999, the AHAS commented that the agency has misinterpreted statutory language related to exemptions (49 U.S.C. 31315 and 31136(e)), questioned the agency's reliance on conclusions drawn from the vision waiver program, and raised procedural objections to this proceeding. We will address these comments in order.

First, the AHAS believes that the agency misinterpreted the current law on exemptions by considering them slightly more lenient than the previous law. This was unquestionably the intention of Congress in drafting section 4007 of the Transportation Efficiency Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107 (See 63 FR 67601, quoting from H.R. Conf. Rep. No. 105–550, at 489–490). Regardless of how one characterizes the new exemption language, the OMCS strictly adheres to the statutory standard for granting an exemption. In short, we determine whether granting the exemption is likely to achieve an equal or greater level of safety than exists without the exemption.

Next, the AHAS maintains that the OMCS cannot rely on data from the waiver study program as a standard for evaluating Mr. Durham's qualifications for an exemption. Its opinion is based on the fact that a valid research model was not used for the vision waiver study program; thus, the results cannot be extrapolated to other drivers who were not in the program. The validity of research designs cannot be accepted or dismissed in a blanket, simplistic statement. The approach used by the agency for the assessment of risk is a valid design that has been used in epidemiology for studies of occupational health. These observational studies compare a treated or exposed group of finite size to a

control group that is large and represents outcomes for the nation as a whole (e.g. national mortality rates or truck accident rates.) This design has been used to investigate risk relative to the hazards of asbestos and benzene with regulatory decisions based on the outcomes.

The strength of the design is that it provides a high level of external validity. Being able to compare outcomes to a national norm places the focus in proper perspective for regulatory matters. This, of course, is the strength relative to the waiver program where the General Estimates System (GES) accident rates represent a national safety norm. While the design has been successfully used in critical risk areas, its application has not been without challenges. Most of the criticism has focused on the data used in the models. It has been correctly argued that exposure to hazards has not always been clearly measured because recordkeeping is not accurate or complete. Criticism has also focused on the poor measurement of health outcomes. Vagueness in the assessment of outcomes was due to poor recordkeeping or exposed individuals not being examined. Threats to the validity of measurement do not appear to be as large an issue in the waiver program's risk assessment. Exposure, for example, in the assessment is manifested by participation in the waiver program (as exposure to a treatment) and through vehicle miles traveled (as exposure to risk). The measurement of participation in the program had no vagueness by virtue of the required recordkeeping. Exposure to risk by vehicle miles traveled was measured by self-report and could, of course, contain errors. As reports were made on a monthly basis, however, it was not expected that the reporting for these short periods would contain significant systematic error over the life of the program. Risk outcomes in this assessment were determined through accident occurrence. Accident occurrence was verified in multiple ways through self-report (a program requirement), the Commercial Driver License Information System, State driving records, and police accident reports. As a result, it is believed that the research approach used in the waiver program did not suffer serious flaws relative to the validity of measurement.

Criticism of the approach taken by the waiver program relative to internal validity could have some merit. Even the original design proposed for the waiver study received concern for its internal validity. That design proposed to use a sample of commercial motor vehicle (CMV) operators without vision deficiencies as a comparison group. While the design was appealing, it had potential for flaws relative to internal validity. Due to the nature of the vision deficiencies examined, the drivers could not be randomly assigned to the waiver and comparison groups as is done in clinical trials. As the desirable paradigm for science, clinical trials go to great length to guarantee internal validity. But, as is being increasingly pointed out in medical research where randomized trials are seen as the basis of good science, even these studies can have flaws which undermine their external validity (U.S. General Accounting Office, ''Cross Design Synthesis; A New Strategy for Medical Effectiveness Research,'' March 1992, GAO/PEMD–92–18).

In the source cited above, it was suggested that the results obtained through randomized clinical trials be adjusted to apply to a patient population which was not represented in the trial, and, thereby, enhanced external validity. Moreover, it was also suggested that the results from other observational (i.e., non-random) studies be used to support the evidence provided by clinical trials. Of course, these studies would have to be assessed to determine the degree of bias present relative to internal validity. If it existed, adjustments would be required. As is more often being recognized, all aspects of scientific endeavor contain flaws; design, measurement, and even the research questions asked (Cook, J.D. ''Postpositivist Critical Multiplism'' in L. Shortland and H.M. Mark (eds.) *Social Science and Social Policy.* Newbury Park, CA: Sage 1985). The necessary approach to obtaining valid results is to thoroughly examine a study for bias and make adjustments where possible. If the original waiver study comparative design had been implemented, it would have probably required adjustments related to both internal and external validity.

The waiver program and its research design were reviewed on several occasions. Most of the critical discussion concerned analytic methodology given the nature of the GES comparison group. The risk monitoring aspect of the design was largely endorsed. However, one researcher correctly criticized the comparison with the national GES data because it would not be possible to assess the potential for comparison bias as a threat to internal validity.This criticism was correct because such potential confounding factors as age and driving patterns are not available in the GES data to determine if a lack of balance exists between the waiver group and the comparison data. If the factors were not balanced, adjustments could not be made. The bias, if it existed, would therefore be hidden. This was a concern to us. To address this concern, a sensitivity analysis was performed to assess the impact of possible hidden bias (Rosenbaum, P.R. *Observational Studies,* New York, Springer-Verlag 1995). The analysis examined outcomes under various levels of hidden bias and the results showed that the comparison with GES accident rates is largely insensitive to hidden bias. The results of this sensitivity analysis, filed in Docket No. FHWA–99–5578, provide evidence to support the internal validity of the comparison to GES data.

Based on the various assessments, it would appear that the results of the waiver program risk analysis are basically valid. The measurement of exposure and risk outcomes were conducted with virtually no error. The external validity is ensured because a national norm is the focus of comparison and, based on the sensitivity analysis, the degree of internal validity is strengthened. To obtain valid results that point to a clear casual connection between an action and an outcome basically rests on ruling out other influences on the outcome. While these appear to be largely accomplished based on an examination of the various types of validity, there remains an additional threat to the validity of the results. Relative to this, it has been argued that the drivers in the various waiver programs have lower accident rates because they are aware of being monitored, and monitoring is a strong motivation to exercise care. Given the possible threat, the agency conducted a follow up assessment after the wavered drivers were given grandfather rights in March 1996. Conducted in June 1998, an assessment of the drivers' accident experience was made for the period to December 1996. The results, on file in Docket No. FHWA–99–5578, showed that the drivers who had been in the program continued to have an accident rate that was lower than the national norm.

Based on the information discussed above, it is reasonable to conclude that the results generated by the waiver program have a high degree of validity. It then remains to determine how these results can be used, i.e., what inferences can be drawn from results and what are the boundaries on these inferences? The AHAS states categorically that ''the agency cannot extrapolate from the experience of drivers in the vision waiver program to other vision impaired

drivers who did not participate in the program.'' To some degree this statement is correct. Based on the design, data collection and analysis associated with the waiver program, the agency does not wish to generalize the results of the study to other drivers with vision deficiencies per se. That is, drivers are not the focus of inference. They are associated with the inference but are not necessarily the subject of inference. Nor are the vision standards the focus of inference from the results. As the AHAS pointed out, ''The FHWA recognizes that there were weaknesses in the waiver study design and believes that the waiver study has not produced, by itself, sufficient evidence upon which to develop new vision and diabetes standards.'' (61 FR 13338, 13340). In making this statement, the FHWA merely recognized that the study design did not ask questions concerning whether there are vision characteristics other than those in standards that could permit safe operating of a CMV. The agency conducted a feasibility assessment to determine if such a study could be designed and implemented. It was concluded that resources were not available to do this.

The target of inference in the waiver study is suggested in another quote offered by the AHAS. The AHAS points out that the agency has stated ''that monocular drivers in the waiver program demonstrated their ability to drive safely supports a conclusion that other monocular drivers, with qualifications similar to those required by the waiver program, can also adapt to their vision deficiency and operate safely.'' This statement captures the focus of inference while being somewhat restrictive relative to the type of vision deficiency involved. The target of the test in the research design was the process of granting waivers. That is, it can be inferred that drivers with vision deficiencies who are approved by the screening process in the waiver program will be able to operate CMVs in a manner that is as safe or safer than the prevailing national safety norm. The inference is not being made to screening processes in general. It is only being inferred for the single process in the waiver program and that this process is viable for the purpose intended. That the AHAS has stated such a conclusion is not tenable because a valid research design was not used is in itself a proposition that does not enjoy support. The discussion of the validity of the approach clarifies the value of results. If the inferences drawn from these results focus on the process tested, the conclusions are valid. It follows ipso facto that the application of the waiver process to future screening should also produce valid results.

The AHAS points out that Mr. Durham differs from other drivers in the vision waiver study program in that his driving record contained a ''gap,'' whereas drivers in the program had 3 years of continuous experience immediately prior to receiving their waiver. As the AHAS notes, that fact contributed to the agency's previous denial of Mr. Durham's request for an exemption. When the FHWA, and now OMCS, reconsidered that decision, however, we concluded that Mr. Durham does meet the criteria in the study program notwithstanding his break in driving experience. He had over 3 years of continuous driving experience with this vision deficiency and established a safe driving record from 1992 to April 1996. This experience exceeded the driving required by the study program criteria and provides a basis for projecting his future performance. The 18-month break from April 1996 to October 1997 would have undermined the reliability of that experience, as a predictor of his ability to drive safely, if he had not resumed driving. By driving from October 1997 until July 1998 without an accident or traffic citation, Mr. Durham demonstrated he still has the ability to adapt his driving skills to accommodate his limited vision. Based on these specific facts, we have concluded that Mr. Durham satisfies the criteria applied in the vision waiver study program and qualifies for an exemption, notwithstanding his break in driving.

In its third point, the AHAS objects to the procedure employed in processing these petitions for exemptions, contending that there is no statutory basis for making a ''preliminary'' determination which tends to pre-judge the outcome. The AHAS makes an analogy to an interim final rule where an agency ''has already made its decision and the burden is unduly and improperly placed on the public to overcome the agency's initial decision to grant the exemption.'' This analogy is misplaced. The agency's ''preliminary determination'' is more aptly compared to a notice of proposed rulemaking, wherein the agency analyzes the basis upon which a new or amended regulation has been considered, and then proposes that the new rule take effect. The agency then considers the information obtained in response to the NPRM and issues a final rule. In a similar vein, the agency analyzes the information provided in an exemption application. Some applications are denied outright. Only when the agency proposes to grant a petition does it publish that proposal, with its analysis of the information submitted in support of the exemption, for public comment. After consideration of public comment, a final decision is published. This procedure is consistent with 49 U.S.C. 31315(b)(4)(A) which requires the OMCS, and previously the FHWA, to publish in the **Federal Register** a notice explaining the request that has been filed, giving the public an opportunity to inspect the safety analysis and any other relevant information known to the agency and allowing the public to comment on the exemption request.

The AHAS filed its second comment on July 7, 1999, to urge that the FHWA reconsider its application of *Rauenhorst* v. *United States Department of Transportation, Federal Highway Administration,* 95 F.3d 715 (8th Cir. 1996), in light of the U.S. Supreme Court's decision in *Albertson's Inc.* v. *Kirkingburg,* 119 S.Ct. 2162 (June 22, 1999). According to the AHAS, the court's decision supports its view that this agency cannot rely on data collected in the vision waiver program to justify issuing additional exemptions. We disagree with the AHAS's interpretation of the *Kirkingburg* case. The court specifically stated in Footnote 21 that the current exemption program was not challenged or considered in its opinion. For that reason, we do not view the case as affecting Mr. Durham's exemptions.

Conclusion

After considering the comments and evaluating Mr. Durham's qualifications in accordance with *Rauenhorst, supra,* the OMCS exempts James F. Durham from the vision requirement in 49 CFR 391.41(b)(10), subject to the following conditions: (1) That he be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in his left eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that he is otherwise physically qualified under 49 CFR 391.41; (2) that he provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that he provide a copy of the annual medical certification to his employer for retention of in its driver qualification file, or keep a copy in his driver qualification file if he is self-employed. Mr. Durham must also have a copy of the certification when driving so it may be presented to a duly authorized Federal, State, or local enforcement official.

In accordance with revised 49 U.S.C. 31315 and 31136(e), Mr. Durham's exemption will be valid for 2 years unless revoked earlier by the OMCS. The exemption will be revoked if (1) he fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136(e). If the exemption is still effective at the end of the 2-year period, Mr. Durham may apply to the OMCS for a renewal under procedures in effect at the time.

Authority: 49 U.S.C. 322, 31315 and 31136; 49 CFR 1.73.

Issued on: December 6, 1999.

Brian M. McLaughlin,

Director of Policy and Program Management, Office of Motor Carrier Safety.

[FR Doc. 99–32104 Filed 12–10–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–99–5143, Notice No. 99–15]

Safety Advisory: Unauthorized Marking of Compressed Gas Cylinders

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Safety advisory notice.

SUMMARY: This is to notify the public that high-pressure, compressed gas cylinders were marked but may not have been tested by Fire Extinguisher Sales & Service (FESS), 1100 Weimer Road, Bloomington, Indiana. Those cylinders may pose a safety risk to the public. During a September 28, 1998 compliance inspection, RSPA determined that FESS had marked an undetermined number of cylinders as having been properly retested in accordance with the Hazardous Materials Regulations (HMR) without retesting the cylinders. In addition, RSPA determined that FESS had marked cylinders as tested in accordance with the HMR without holding a Retester Identification Number (RIN) issued by RSPA.

A hydrostatic retest and visual inspection, conducted as prescribed in the HMR, are used to verify the structural integrity of a cylinder. If the hydrostatic retest and visual inspection are not performed in accordance with the HMR, a cylinder with compromised structural integrity may be returned to service when it should be condemned. Serious personal injury, death, or property damage could result from rupture of a cylinder. Cylinders that have not been retested in accordance with the HMR may not be charged or filled with compressed gas or other hazardous material.

FOR FURTHER INFORMATION CONTACT: Guadalupe Castellanos, Hazardous Materials Enforcement Specialist, Central Region, Office of Hazardous Materials Enforcement, Research and Special Programs Administration, US Department of Transportation, 2350 East Devon Avenue, Suite 136, Des Plaines, IL 60018. Telephone: (847) 294–8580, (847) 294–8590 fax.

SUPPLEMENTARY INFORMATION: Based on its inspection, RSPA learned from FESS that it had been servicing cylinders without holding a RIN for nearly 30 years. Furthermore, the condition of the equipment at the time of inspection indicated that it had not been used by FESS to hydrostatically test cylinders for quite some time. FESS indicated in a written statement to RSPA that it had represented cylinders as properly tested when no tests had been performed. Because FESS failed to maintain accurate records of retest and reinspection, it is impossible to determine the number of cylinders that FESS has marked without retesting or retested without a RIN. These cylinders may pose a safety risk to the public.

Cylinders serviced by FESS prior to November 23, 1998, are marked on their shoulders with the letters ''M'' and ''L'' separating the month and year of the alleged hydrostatic retest. For example:

M
5 98
L

Anyone who has a cylinder that was last serviced by FESS or marked with an ''M'' and ''L'' should consider the retest marking invalid and should not refill and offer the cylinder for transportation until it has been successfully retested.

It is further recommended that persons finding or possessing cylinders described in this safety notice contact Ms. Guadalupe Castellanos for additional information.

Issued in Washington, DC on December 8, 1999.

Robert A. McGuire,

Deputy Associate Administrator for Hazardous Materials Safety.

[FR Doc. 99–32202 Filed 12–10–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–99–4523; Notice 2]

Pipeline Safety: Candidates for System Integrity Inspection Pilot Program

AGENCY: Office of Pipeline Safety, DOT.

ACTION: Notice.

SUMMARY: The Office of Pipeline Safety (OPS) has completed an initial screening of three candidate companies for the System Integrity Inspection (SII) Pilot Program. They are Conoco Pipe Line Company, El Paso Natural Gas Company, and Portland Pipe Line Corporation. OPS believes these companies' SII project proposals satisfy the established eligibility and screening criteria, based on a review of each company's Application Letter and safety and compliance record. OPS is beginning discussions with these companies to explore their proposed SII projects in more detail. Before making its final selection of SII Pilot Program participants, OPS invites public comment on any aspect of a candidate company's participation in the SII Pilot Program. OPS will consider this feedback in the final selection of SII Pilot Program companies. OPS may later screen additional candidate companies, and will publish summaries of their proposals in subsequent **Federal Register** Notices.

The appendix to this notice provides information on how OPS will examine the management processes each company employs for conducting and documenting internal audits for regulatory compliance.

DATES: OPS requests that comments to this Notice be submitted on or before February 11, 2000, so that public input can be fully considered before OPS selects qualified SII Pilot Program participants.

ADDRESSES: You may submit written comments to the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. Comments should identify the docket number RSPA–99–4523. Submit the original comment document and one (1) copy. If you wish to receive confirmation of receipt of your comments, you must include a self-addressed stamped postcard. The Dockets Facility is located on the plaza level of the Nassif Building in Room 401, 400 Seventh Street, SW., Washington, DC. The Dockets Facility is open from 10 a.m. to 5 p.m., Monday

through Friday, except on Federal holidays. You may also submit comments to the docket electronically. To do so, log on to the Dockets Management System web site at http://dms.dot.gov. Click on Help & Information to obtain instructions for filing a document electronically.

FOR FURTHER INFORMATION CONTACT: Donald Moore (816) 426–2654 or any of the five OPS Regional Directors: William Gute (202) 366–4580, Frederick Joyner (404) 562–3530, Ivan Huntoon (816) 426–2654, Rodrick Seeley (713) 718–3746, or Christopher Hoidal (303) 231–5701. Contact the Dockets Unit, (202) 366–5046, for docket material.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Pipeline Safety (OPS) is in the process of improving its regulatory programs to assure greater levels of safety, environmental protection, and service reliability. An important part of this effort is re-examining the approach OPS uses to inspect interstate pipeline operators and searching for more effective processes. Traditionally, OPS inspections have focused on ensuring compliance with applicable pipeline safety regulations. While this focused approach assures that operators are complying with all regulatory requirements, it may not be the most effective approach to improving safety.

The System Integrity Inspection (SII) Pilot Program is designed to test whether a more broad-based examination of an operator's safety and pipeline integrity programs, including many areas not currently considered during a typical inspection, will improve performance. Although OPS will continue to require an operator's compliance with the pipeline safety regulations, under the SII approach, an SII Team (composed of OPS and interstate agency personnel) will work cooperatively with the operator to address pipeline system integrity issues, including areas that the regulations may not address. To ensure continued pipeline safety regulatory compliance, a participating operator must conduct comprehensive internal audits for compliance that will be subject to external verification by OPS. To be accepted into the program, the candidate company must demonstrate that:

- A formal internal audit process is in place;
- Internal audits are regularly conducted;
- Audit findings are documented and communicated;
- Corrective actions to address audit findings are defined and implemented; and
- Corrective action status is tracked and communicated.

After a company is accepted into the SII Pilot Program, the SII Team will verify internal audit records and field performance to ensure that the company is effectively implementing its internal audit process. The Appendix to the notice describes the approach OPS will use for conducting this verification.

This enhancement of current inspection practices will improve communication and information sharing between operators and the government, and focus management attention and resources on the most important risks to pipeline safety. After reasonable experience with the pilot, OPS will determine whether and in what form the SII approach should be incorporated into the Federal pipeline safety program on a permanent basis.

The Notice ''Pipeline Safety: Request for System Integrity Inspection Pilot Program Applications'' (63 FR 68819) published on December 14, 1998, announced the initiation of the SII Pilot Program, and requested that operators interested in participating in this program submit Application Letters to OPS. The Notice also described the SII Pilot Program, and the process to select operators for this program.

OPS has completed an initial screening of three candidate companies for the SII Pilot Program: Conoco Pipe Line Company, El Paso Natural Gas Company, and Portland Pipe Line Corporation. OPS believes these companies' SII project proposals satisfy the eligibility and screening criteria delineated in the December Federal Register Notice, based on a review of each company's Application Letter and safety and compliance record. OPS has begun discussion with these companies to better understand their proposed SII projects. These discussions will focus on:

- Operating history and a more detailed description of the pipeline system proposed for the SII Pilot Program.
- Internal audit program and processes the operator uses to ensure regulatory compliance.
- System integrity activities, processes, and programs the operator uses to monitor, maintain, and improve pipeline integrity, including programs that exceed regulatory requirements in addressing potential safety and environmental threats from system operation.
- Management processes used to identify and prioritize the most significant threats to pipeline integrity, and how maintenance and capital projects are identified, prioritized, and implemented to address these threats.
- New technologies, or innovative applications of existing technologies, to improve operation and enhance safety and environmental performance.
- Performance measures to assure that a company's integrity management program is effective, including indicators of the company's understanding of pipeline system-wide condition, familiarity with and implementation of risk assessment and risk control approaches, integration and communication of system integrity-related information, effectiveness of its internal audit program and processes, performance assessment, feedback and results orientation, and visibility of company management commitment to safety.

Before making its final selection of SII Pilot Program participants, OPS invites public comment on any aspect of a candidate company's participation in the SII Pilot Program. Each company's Application Letter is available via an internet-accessible information system that can be reached through the OPS web site at http://ops.dot.gov. OPS will also consult with eligible state pipeline safety agencies from the states affected [1] by a proposed SII project. This feedback will be considered in the final selection of SII Pilot Program companies.

OPS may screen additional SII Pilot Program candidates in the near future. Summaries of their application letters will be published in subsequent **Federal Register** Notices.

II. Application Letter Summaries

Each of three pipeline operators identified in this notice submitted an Application Letter to the SII Pilot Program. In these letters, senior management committed to improving the safety and environmental performance of its operations, and to the SII approach as a means of furthering that objective. These companies have committed to work with OPS, openly discussing and sharing information on integrity issues that might not be fully addressed through the traditional inspection process. The letters also summarized each company's internal audit process for assuring compliance, and its system integrity program that goes beyond the minimum regulatory requirements to address potential risks to its pipeline system. In discussions

[1] ''Affected states'' means states through which the pipeline system proposed for the SII Pilot Program passes. An eligible state pipeline safety agency is one that has active Interstate Agent status.

with each company, OPS intends to explore these programs in more detail to be sure they will support a meaningful demonstration of the SII approach. The remainder of this section describes the pipeline systems proposed for the SII Pilot Program.

1. Conoco Pipeline Company (Conoco): Conoco is proposing a total of 2,610 pipeline miles in nine different pipeline systems for the SII Pilot Program. A summary description of each system follows.

Glacier Pipeline System: The Glacier System transports crude oil from the U.S.-Canadian border near Carway, Alberta, to several locations in Montana. The system is composed of 8-inch, 10-inch, and 12-inch diameter mainlines, and several lateral lines that deliver oil to refineries in Billings and Laurel, Montana, and tank storage areas. The Glacier system also consists of an 8-inch diameter line that transports crude oil from Byron, Wyoming, to Laurel and Billings, Montana. The total pipeline system mileage is approximately 775 miles, located in Montana and Wyoming.

Yellowstone Pipe Line Company: The Yellowstone system delivers refined petroleum products through a 10-inch diameter mainline and two 6-inch diameter spurs. The mainline provides products from the refineries in Billings, Montana, to terminals in Bozeman, Helena, and Missoula, Montana, and Spokane, Washington. The Moses Lake spur connects Moses Lake, Washington, and Spokane. This spur includes delivery stations at Fairchild Air Force Base and Geiger International Airport. The Great Falls spur extends from Helena to Great Falls, Montana. The total pipeline system mileage is approximately 742 miles, located in Montana, Idaho, and Washington.

Seminoe Pipeline System: The Seminoe system is located in Montana and Wyoming. The Seminoe system consists of an 8-inch diameter refined products line extending 335 miles from Billings, Montana, to Sinclair, Wyoming. The system passes through Casper, Wyoming, where interim storage tanks are located.

Pioneer Pipe Line Company: The Pioneer system is located in Wyoming and Utah. The Pioneer system consists of an 8-inch diameter refined products pipeline, which extends 291 miles from Sinclair, Wyoming, to Salt Lake City, Utah. Refined products are delivered to Conoco's Rock Springs, Wyoming, product terminal and to Salt Lake Terminal Company's North Salt Lake tank storage facility.

Rocky Mountain Pipeline System: The Rocky Mountain system is a crude oil system located in Wyoming and Colorado. This 288-mile system originates at Lance Creek, Wyoming, where it receives crude oil from various other pipeline companies and gathering systems. The system passes through Guernsey, Wyoming, and on to Cheyenne, Wyoming, transporting oil in 8-inch and 10-inch diameter lines. At Cheyenne, the oil is delivered to a refinery or to breakout tanks, where it is subsequently transported to Denver, Colorado, via a 10-inch diameter line.

Centennial Pipeline System: The Centennial system transports crude oil via a 12-inch diameter pipeline from Guernsey to Cheyenne. This 82-mile system is located entirely in Wyoming.

Cheyenne Products Pipeline System: The Cheyenne system is a 6-inch diameter refined products line that extends 105 miles from Cheyenne, Wyoming, to Sidney, Nebraska.

DIA Jet Fuel Pipeline System: This system transports commercial jet fuel from Conoco's Denver refinery to the Chase Pipe Line terminal that services Denver International Airport. The system consists of 8-inch, 6-inch, and 4-inch diameter lines totaling approximately 7.5 miles.

Denver Diesel Pipeline System: This system is a 4-inch, 2.75-mile pipeline that transports diesel fuel from Conoco's Denver refinery to the Union Pacific Railroad tank farm.

2. El Paso Natural Gas Company (El Paso): El Paso is proposing to include two interstate natural gas pipelines in the SII Pilot Program. These systems collectively comprise over 10,000 miles of pipeline and are powered by 58 compressor stations.

El Paso Natural Gas System: The El Paso system provides interstate gas transmission services from the major producing regions in West Texas, New Mexico, Colorado, and Oklahoma to industrial end-user customers and to local natural gas distribution companies in California, Nevada, Arizona, New Mexico, Texas, and northern Mexico. The approximately 9,870-mile system is located in Arizona, Colorado, New Mexico, Oklahoma, and Texas.

Mojave Pipeline Operating Company: The Mojave system connects the Bakersfield, California, area with northwest Arizona, providing natural gas to industrial users and distribution companies in California. This 362-mile system is located almost entirely in California with a compressor station just east of the Colorado River in Arizona.

1. Portland Pipe Line Corporation (Portland): Portland Pipe Line Corporation, along with Montreal Pipe Line Limited, comprise the Portland-Montreal Pipe Line System. This system transports crude oil from South Portland, Maine, to Montreal East, Quebec. Portland owns the portion of this system that is located in the United States, and is proposing these facilities for the SII Pilot Program. The Portland portion of the system has 18-inch and 24-inch diameter pipelines laid side-by-side in the same right-of-way. Together these lines comprise 332 pipeline miles traversing the states of Maine, New Hampshire, and Vermont. The systems enters Canada near Highwater, Quebec. The Portland system has a tanker unloading terminal and tank farm at South Portland, Maine.

III. Information Available to the Public

The **Federal Register** Notice, ''Pipeline Safety: Request for System Integrity Inspection Pilot Program Applications'' describes the SII approach that will be evaluated during the Pilot Program. In addition, OPS provides current information on the SII Pilot Program through a web site that can be reached via the OPS home page at http://ops.dot.gov. This web site contains descriptive information about the SII Pilot Program, frequently asked questions and answers, and access to program-related documents. OPS will announce its selections of SII Pilot Program participants through the web site. After selection, information on a company's performance will be available through this site. The SII web site also supports OPS's on-going communication and outreach efforts by providing an opportunity for the public to communicate directly to OPS using the ''Feedback'' feature on the web site. OPS welcomes comments and input throughout the SII Pilot Program.

Issued in Washington, DC, on December 7, 1999.

Stacey L. Gerard,

Director, Policy, Regulations and Training.

Appendix A—Internal Audit Program Review

An essential element of the SII Pilot Program approach is the operator's internal program for conducting assessments to ensure compliance with pipeline safety regulations. During the SII Pilot Program, standard inspections for compliance with the Federal pipeline safety regulations will not be conducted on the operator's system. Instead, the operator must conduct regular internal audits on its system to ensure compliance with applicable regulatory requirements. OPS will then verify the operator's internal audits during the annual SII Team reviews.

For this approach to be successful, it is imperative that the operator have a formal, comprehensive, and effective internal audit program. After an operator is accepted into the SII Pilot Program, the SII Team will

review its internal audit program to confirm that it ensures compliance with the pipeline safety regulations. During this review, the SII Team will examine the company's management processes for conducting and documenting internal audits, and will check records and facilities to confirm that the program is effective.

This appendix describes the key elements of the SII Team's internal audit program review. It is divided into three sections. The first section deals with review of the internal audit program and processes; the second part discusses field verification of performance; and the final section describes the summary report documenting the internal audit program review.

A.1 Internal Audit Program Review

Prior to conducting the on-site internal audit review, the SII Team members will review the operator's safety and environmental performance history, its compliance record, and the key facility and pipeline system design features. This will assure that the Team members are well-informed when they arrive at the company's offices so the review can quickly focus on the internal audit program and its documentation. This advance preparation will include:

• Reviewing recent compliance history as documented in Safety-Related Condition Reports, Annual Reports (for gas operators), compliance actions, documentation and findings from recent OPS or interstate agent inspections, and any accident/incident documentation.

• Reviewing the Federal Emergency Management Agency (FEMA) hazard index and other information sources to identify geographic or environmental areas of special concern.

• Reviewing the results of the joint Operations and Maintenance Manual Review, and how the company has addressed any findings from this review.

• Obtaining information from OPS inspectors, interstate agents from affected states, Regional Directors, and OPS Headquarters Program Directors on:

► Company program strengths and innovative approaches to internal evaluation;

► Use of technology to support internal evaluation;

► Recurring areas of concern identified during inspections and receptiveness to OPS/interstate agent recommendations to address these issues;

► Lessons learned and actions taken following leaks, incidents, or other abnormal operational events; and

► State, local, or regional issues, and any public complaints.

The on-site review of the operator's internal audit program will involve an examination of the company's internal audit program documentation and records, as well as interviews with key management personnel responsible for implementation of the process. While the specific SII Team review activities will be tailored for the company's management system and tools, the major activities are expected to include:

• Reviewing formal documentation of the operator's internal audit program. This includes the policies, procedures, guidelines, and manuals that describe how the company conducts its program. In examining this documentation, the SII Team will look for the following elements:

► A description of a comprehensive process assuring the company critically examines the operations for compliance with Federal pipeline safety regulations. This process should also include:

• Conducting internal audits,

• Documenting and communicating internal audit findings,

• Defining corrective actions to address audit findings,

• Reviewing, approving, and authorizing corrective actions to address findings,

• Tracking and communicating the status of corrective actions,

• Ensuring timely and successful completion of corrective actions, and closing out original audit findings,

• Documenting and communicating internal audit results to appropriate company management and personnel,

• Establishing the schedule by which systems or portions of systems are to be audited (based on risk, past performance, and previous audit results),

• Obtaining regulatory interpretation on potential compliance issues,

• Ensuring that new regulatory requirements are implemented appropriately and consistently, and

• Developing and updating the company's internal audit program documentation and procedures.

► A delineation of the roles, responsibilities, and authority for each of these internal audit activities.

► Training for the company's audit personnel.

► A schedule identifying which systems (or portions of systems) will be audited in the near-term, and the frequency at which all systems are evaluated for regulatory compliance.

► A description of the internal audit records and documentation that are prepared, and their management review and retention requirements.

► A management review process that periodically evaluates the suitability, adequacy, and effectiveness of the company's internal auditing process, and the need for improvements to the internal auditing policies, process, or procedures.

► Performance measures used by the company to understand, evaluate, and communicate their regulatory compliance status, and the effectiveness of their internal audit program.

• Interviewing key personnel involved in implementing the operator's internal audit process, including the managers responsible for the internal audit program as well as personnel who actually perform internal audits. The purpose of these discussions is to understand how the operator actually implements the internal audit process described in the company's program documentation.

• Meeting with company management to understand the level of management support and awareness of the internal audit process. These discussions will also address how the results of the audits are communicated and used in the company.

• Reviewing representative records documenting the internal audit process, such as:

► Completed checklists,

► Compliance tracking software output,

► Internal audit reports,

► Management summary reports,

► Corrective action tracking database output,

► Corrective action status reports,

► Transmittal letters communicating findings and action items to appropriate personnel, and

► Company reports documenting management review of the internal audit process and recommended improvements.

• Reviewing the results of internal company evaluations of the effectiveness of its internal audit process. This will help the SII Team understand how the company has evolved and improved its internal audit program.

Exhibit A of the **Federal Register** Notice announcing the SII Pilot Program (63 FR 68819) delineates some key internal audit process features that the SII Team will be considering in conducting the activities listed above.

A.2 Internal Audit Field Validation

After the review of the operator's internal audit program, processes, and documentation, the SII Team will conduct field validation checks. These validation checks will confirm that the operator is in compliance, and that the operator's internal audit program has been effective in identifying and correcting any noncompliance situations. These field validation checks will serve to further verify the effective implementation of the internal audit process.

The selection of field inspection sites will consider the operator's internal audit findings and exceptions, system performance data, and accident/incident information. Where possible, the SII Team will perform an integrated review of information from a variety of sources (e.g., internal inspection results, close interval surveys, leak history, and other observed conditions) in selecting field validation check sites. Portions of the system that are crucial for public and environmental protection and operations reliability will be given special emphasis by OPS in selecting field validation sites. In addition, OPS has also identified several specific areas that will be given high priority in field validation site selection:

• Pipe in, across, or over bridges, streams, national parks, wild and scenic rivers, cultural areas, populated areas, wetlands, environmentally sensitive areas, large reservoirs and aquifers with water for human consumption, high hazard and high consequence areas (as identified in FEMA reports);

• Pipe at supports;

• Locations with marginal cathodic potential readings, including those identified during close interval surveys, or areas where disbonded coating is suspect;

• Right-of-way locations where there may be localized issues or areas of unique interest identified in patrolling records;

• Locations with anomalous or unusual SCADA system output;
• Locations with ongoing operation/maintenance (e.g., re-coating, lowering in-service lines, or pipe replacement activities);
• Rehabilitation projects, condition of rehabilitated pipe and coatings;
• Class location change sites; and
• Overpressure device settings.

During the field validation checks, the SII Team will examine records, equipment used to transport and treat the product, and other evidence to confirm compliance. The Team will also interview selected field personnel to give the Team a practical perspective from which to review field records and other evidence. These discussions will also help the SII Team understand how well the company's internal audit process is institutionalized, and the operator's commitment to compliance.

A.3 Summary Report

After the SII Team has completed the internal audit program review and the field validation checks, the Team will prepare a summary report. This summary report will contain the SII Team's observations on the operator's internal audit program and processes, as well as on the effectiveness of this program in achieving compliance. The report will document the positive features of the company's internal audit program and any areas that need improvement. If the SII Team and the operator have agreed upon specific internal audit programmatic improvements that must be made, these improvements will be articulated in the report, as well as a schedule for their completion. If any compliance issues are discovered during the review, the resolution of those issues will be included in this report.

[FR Doc. 99–32203 Filed 12–10–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33815]

Maryland and Pennsylvania Railroad Company and Yorkrail, Inc.—Intracorporate Family Transaction Exemption

Emons Transportation Group, Inc. (Emons), Emons Railroad Group, Inc. (Emons Rail), Maryland and Pennsylvania Railroad Company (MPA), Yorkrail, Inc. (YKR), Maryland and Pennsylvania Railroad, LLC (M&P LLC) and Yorkrail, LLC (Yorkrail LLC) have filed a verified notice of exemption. The exempt transaction involves the merger of MPA and YKR into the newly formed York Railway Company (York), with York as the successor corporation.[1] Certain physical assets of MPA and YKR will be transferred to, respectively, M&P LLC and Yorkrail LLC, two newly formed limited liability companies.[2]

The transaction was expected to be consummated on December 1, 1999.

The merger of MPA and YKR is intended to simplify

Emons' corporate structure, streamline accounting, finance and management functions, and facilitate improvements in the operational efficiency of Emons' rail holdings. The creation of M&P LLC and Yorkrail LLC will preserve certain favorable financing and funding arrangements available to Emons.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the 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 reopen will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33815, 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 Thomas J. Litwiler, Esq., Oppenheimer Wolff Donnelly (Illinois), Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601–6710.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: December 6, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–32213 Filed 12–10–99; 8:45 am]

BILLING CODE 4915–00–P

[1] MPA and YKR are two connecting Class III carriers operating in the State of Pennsylvania. York will be a wholly owned subsidiary of Emons Rail, which in turn is a wholly owned subsidiary of Emons. York will assume all rail operations of MPA and YKR.

[2] M&P LLC and Yorkrail LLC will be controlled exclusively by York. M&P LLC and Yorkrail LLC will not conduct rail operations but will assume common carrier status by virtue of their ownership of the underlying rail assets that York will operate.

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 99–92]

Extension of Customs Approval as a Commercial Gauger and Customs Accreditation as a Commercial Laboratory for Saybolt, Inc.

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of extension of approval as a commercial gauger and extension of accreditation as a commercial laboratory for Saybolt, Incorporated.

SUMMARY: Saybolt Inc. of Houston, Texas, an approved Customs gauger and accredited laboratory, has applied to U.S. Customs to extend its approval to gauge petroleum and petroleum products under § 151.13 of the Customs Regulations (19 CFR 151.13) and to extend its accreditation as a commercial laboratory under § 151.12 of the Customs Regulations (19 CFR 151.13) to their Tampa, Florida facility. Customs has determined that this office meets all of the requirements necessary for approval as a commercial gauger and accreditation as a commercial laboratory. Therefore, in accordance with § 151.13 of the Customs Regulations Saybolt Inc., of Tampa, Florida is approved to gauge the products named above in all Customs ports. Additionally, in accordance with § 151.12 of the Customs Regulations Saybolt Inc. of Tampa, Florida is granted accreditation to perform the following analysis: API Gravity; Distillation; Reid Vapor Pressure; Viscosity; Sediment by Extraction and Percent by Weight of Sulfur.

LOCATION: Incorporated approved site is located at: 1501 Delmar B. Drawdy Drive, Tampa, Florida, 33605.

EFFECTIVE DATE: September 6, 1999.

FOR FURTHER INFORMATION CONTACT: Michael Parker, Science Officer, Laboratories and Scientific Services, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Suite 1500 North, Washington, D.C. 20229 at (202) 927–1060.

Dated: December 6, 1999.

George D. Heavey,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 99–32238 Filed 12–10–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF VETERANS AFFAIRS

Voluntary Service National Advisory Committee, Notice of Availability of Annual Report

Under section 10(d) of Public Law 92–463 (Federal Advisory Committee Act), notice is hereby given that the Annual Report of the Department of Veterans Affairs' Voluntary Service (VAVS) National Advisory Committee (NAC) for 1999 has been issued.

The report is a summary of the 53rd Annual Meeting of the VAVS National Advisory Committee. It is available for public inspection at two locations:

Federal Documents Section, Exchange and Gift Division, LM 632, Library of Congress, Washington, DC 20540

and

Department of Veterans Affairs, Office of the Under Secretary for Health, VA Central Office, Room 805, 810 Vermont Avenue, NW, Washington, DC 20420

Dated: November 30, 1999.

By Direction of the Secretary.

Marvin R. Eason,

Committee Management Officer.

[FR Doc. 99–32237 Filed 12–10–99; 8:45 am]

BILLING CODE 8320–01–M

federal register

Monday
December 13, 1999

Part II

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 431

Energy Efficiency Program for Commercial and Industrial Equipment: Test Procedures and Efficiency Standards for Commercial Warm Air Furnaces; Efficiency Certification, Compliance, and Enforcement Requirements for Commercial Heating, Air Conditioning and Water Heating Equipment; Proposed Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 431

[Docket No. EE–RM/TP–99–450]

RIN No. 1904–AA96

Energy Efficiency Program for Commercial and Industrial Equipment: Test Procedures and Efficiency Standards for Commercial Warm Air Furnaces; Efficiency Certification, Compliance, and Enforcement Requirements for Commercial Heating, Air Conditioning and Water Heating Equipment

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Proposed Rule and Public Hearing.

SUMMARY: The Energy Policy and Conservation Act, as amended (EPCA), establishes energy efficiency standards and test procedures for certain commercial equipment, including commercial warm air furnaces. In today's rule the Department of Energy (DOE or the Department) proposes regulations to implement the standards and test procedures for these furnaces and to address other ancillary matters (e.g., compliance certification, prohibited actions, and enforcement procedures) for commercial heating, air conditioning and water heating equipment generally.

DATES: The Department will accept comments, data, and information regarding the proposed rule until February 28, 2000. Please submit ten (10) copies. In addition, the Department requests that you provide an electronic copy (3½'' diskette) of the comments in WordPerfect™ 8.

The Department will hold a public hearing on Thursday, January 27, 2000, in Washington, DC. Please send requests to speak at the hearing so that the Department receives them by 4:00 p.m., January 24, 2000. Send ten (10) copies of your statements for the public hearing so that the Department receives them by 4:00 p.m., January 24, 2000. The Department also requests a computer diskette (WordPerfect™ 8) of each statement.

ADDRESSES: Please address requests to make statements at the public hearing and send copies of such statements to Ms. Brenda Edwards-Jones, and send written comments to Mr. Cyrus Nasseri, each at the following address: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–41, 1000 Independence Avenue, SW, Washington, DC 20585–0121. You should identify all such documents both on the envelope and on the documents as ''Energy Conservation Program for Commercial Equipment: Test Procedures for Commercial Warm Air Furnaces and Certification Requirements for Commercial Equipment, Docket No. EE-RM/TP–99–450.'' The hearing will begin at 9:00 a.m., on Thursday, January 27, 2000, and will take place in Room 1E–245 at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121. You can find more information concerning public participation in this rulemaking proceeding in section IV, ''Public Comment,'' of this notice.

You can read copies of the transcript of the public hearing and public comments received in the Freedom of Information Reading Room (Room No. 1E–190) at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station, EE–41, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–9138, FAX (202) 586–4617,

e-mail: Cyrus.Nasseri@ee.doe.gov, or Edward Levy, Esq, U.S. Department of Energy, Office of General Counsel, Mail Station, GC–72, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–9507, e-mail: Edward.Levy@hq.doe.gov

SUPPLEMENTARY INFORMATION:

The proposed rule refers to certain industry standards established by the American National Standards Institute (ANSI), the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE), the Illuminating Engineering Society of North America (IES), and Underwriters Laboratories (UL). These individual industry standards are referenced by the single comprehensive ''ANSI/ASHRAE/IES Standard 90.1–1989,'' which will be cited by its shorter title ''ASHRAE/IES Standard 90.1'' in the rest of this document. The proposed rule would incorporate, by reference, the test procedures contained in ASHRAE/IES Standard 90.1 for commercial warm air furnaces. Those industry standards are: American National Standards Institute (ANSI) Standard Z21.47–1993, ''Gas-Fired Central Furnaces'; and Underwriters Laboratories (UL) Standard 727–1994, ''Standard for Oil-Fired Central Furnaces.'' The proposed rule would also incorporate by reference, (1) Sections 8.2, 11.2, and 11.2.1, and accompanying Forms 715 and 721, of the Hydronics Institute (HI) Standard ''Testing and Rating Standard for Heating Boilers,'' 6th Edition, 1989, which specify a flue loss calculation procedure for oil-fired equipment, and (2) Sections 7.2.2.4, 7.8, 9.2 and 11.3.7 of the ASHRAE Standard 103–1993, ''Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers,'' which specify a test procedure for condensing furnaces.

You can view copies of these standards at the Department of Energy's Freedom of Information Reading Room at the address stated above. You can obtain copies of the ASHRAE and HI standards from the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc., 1971 Tullie Circle, NE, Atlanta, GA 30329, and the Hydronics Institute Inc., 35 Russo Place, Berkeley Heights, N.J. 07922, respectively. You can obtain copies of the ANSI and UL standards from Global Engineering Documents, 15 Inverness Way East, Englewood, CO 80112, or http://global.ihs.com/. You can obtain electronic versions of the ASHRAE standards at ASHRAE's web site, http://www.ashrae.org/book/bookshop.htm, and of the ANSI standards at ANSI's web site, http://webstore.ansi.org/ansidocstore/. For more information concerning public participation in this rulemaking proceeding, see section IV, ''Public Comment,'' of this notice.

You can obtain the latest information regarding the public hearing from the Office of Codes and Standards world wide web site at the following address: http://www.eren.doe.gov/buildings/codes_standards/index.htm.

I. Introduction
A. Authority
B. Background.
1. General.
2. The Test Procedures for Furnaces.
C. The Proposed Rule.
II. Discussion
A. General.
B. ASHRAE/IES Standard 90.1 Referenced Furnace Test Standards.
C. Definition of Thermal Efficiency for Furnaces.
D. Procedures for Measuring Flue Losses of Oil Furnaces and Incremental Efficiency of Condensing Furnaces.
1. Flue Loss Calculation for Oil-Fired Furnaces.
2. Condensing Furnaces.

E. Sampling, Certification and Enforcement for Commercial Heating, Air Conditioning and Water Heating Equipment.
1. Background and Public Comments.
a. Purpose.
b. Sampling.
c. Public Comments and Recommendations.
2. Proposed Certification and Enforcement Procedures.
a. Certification Procedures.
b. Basis for Certification: Methods for Determining Efficiency.
c. Voluntary Independent Certification Program.
d. Manufacturers Not Participating in a VICP.
e. Enforcement.
3. Accommodation for Manufacturing Tolerances, Measurement Uncertainty and Small Sample Sizes.
III. Procedural Requirements
A. Review Under the National Environmental Policy Act of 1969.
B. Review Under Executive Order 12866, ''Regulatory Planning and Review.''
C. Review Under the Regulatory Flexibility Act.
D. Review Under Executive Order 13132.
E. Review Under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights.''
F. Review Under the Paperwork Reduction Act.
G. Review Under Executive Order 12988, ''Civil Justice Reform.''
H. Review Under Section 32 of the Federal Energy Administration Act of 1974.
I. Review Under Unfunded Mandates Reform Act of 1995.
J. Review Under the Plain Language Directives.
K. Review Under the Treasury and General Government Appropriations Act, 1999.
IV. Public Comment
A. Written Comment Procedures.
B. Public Hearing.
1. Procedures for Submitting Requests to Speak.
2. Conduct of Hearing.
C. Issues on which Comments are Requested.

I. Introduction

A. Authority

Part B of Title III of the Energy Policy and Conservation Act (EPCA) of 1975, Pub. L. 94–163, as amended, by the National Energy Conservation Act of 1978 (NECPA), Pub. L. 95–619, the National Appliance Energy Conservation Act of 1987 (NAECA), Pub. L. 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Pub. L. 100–357, and the Energy Policy Act (EPACT), Pub. L. 102–486, established the Energy Conservation Program for Consumer Products other than Automobiles. Part 3 of Title IV of NECPA amended EPCA to add ''Energy Efficiency of Industrial Equipment,'' which included air conditioning equipment, furnances, and other types of equipment.

EPACT also amended EPCA with respect to industrial equipment. It provided definitions, test procedures, labeling provisions, energy conservation standards, and authority to require information and reports from manufacturers. See 42 U.S.C. 6311–6316. Specifically, for example, EPCA now authorizes the Secretarey of Energy to prescribe test procedures that are reasonably designed to produce results which reflect energy efficiency, energy use and estimated operating costs, and that are not unduly burdensome to conduct. 42 U.S.C. 6314. With respect to certain industrial equipment for which EPCA prescribes energy conservation standards, including commercial war air furnances, ''the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the American Society of Heating, Refrigerating and Air Conditioning Engineers, as referenced in ASHRAE/ IES/ Standard 90.1 and in effect on June 30, 1992.'' 42 U.S.C. 6314(a)(4)(A). Further, if such an industry testing or rating procedure gets amended, DOE must revise its test procedure to be consistent with the amendment, unless the Secretary determines, based on clear and convincing evidence, that to do so would not meet general requirements spelled out in the statute for test procedures. 42 U.S.C. 6314(a)(4)(B). Before prescribing any test procedures for this equipment, the Secretary must publish them in the **Federal Register** and afford interested persons at least 45 days to present data, views and arguments. 42 U.S.C. 6314(b). Effective 360 days after a test procedure rule applicable to certain covered equipment, including commercial warm air furnances, is prescribed, no manufacturer, distributor, retailer or private labeler may make any representation in writing or in broadcast advertisement respecting the energy consumption or cost of energy consumed by such equipment, unless it has been tested in accordance with the prescribed procedure and such representation fairly discloses the results of the testing. 42 U.S.C. 6314(d). Finally, EPACT extends certain powers, originally granted to the Secretary under NAECA, to require manufacturers of equipment covered by this proposed rule to submit information and reports for a variety of purposes, including insuring compliance with requirements. See 42 U.S.C. 6316(a).

B. Background

1. General

The Department of Energy (DOE or the Department) has an energy conservation program for consumer products, conducted under Part B of Title III of EPCA, 42 U.S.C. 6291-6309. Under EPCA, the consumer appliance standards program essentially consists of four parts: test procedures, Federal energy conservation standards, labeling, and certification and enforcement procedures. The Federal Trade Commission (FTC) is responsible for labeling, and the Department implements the remainder of the program as codified in Title 10 of the Code of Federal Regulations, Part 430—Energy Conservation Program for Consumer Products.

Since 10 CFR part 430 covers consumer products, which differ from commercial and industrial equipment, the Department is creating a new Part 431 in the Code of Federal Regulations (10 CFR part 431), Energy Conservation Program for Commercial and Industrial Equipment, to implement DOE's program for certain commercial and industrial equipment covered under EPCA. These will include commercial heating, air conditioning and water heating equipment. This new program will consist of: Test procedures, Federal energy conservation standards, labeling, and certification and enforcement procedures. EPCA directs the Department, rather than the FTC, to administer the statute's efficiency labeling provisions for commercial equipment.

On April 14 and 15, 1998, the Department convened a public workshop to solicit views and information from interested parties that would aid in the development of rules for commercial heating, air conditioning and water heating equipment. The Department requested comment on a number of specific issues, including issues related to test procedures, and the most cost effective and reliable regimes for sampling, certification and enforcement. Statements during the public workshop and written comments that were received afterwards helped refine the issues involved in this rulemaking and provided useful information contributing to their resolution. The Department convened a second public workshop on October 18, 1998, to obtain comments on the issues as they had been refined, and on approaches presented by the National Institute of Standards and Technology (NIST) for resolving them.

2. The Test Procedures for Furnaces

During the April 1998 workshop, the Department sought comments on the following issues regarding test procedures for commercial warm air furnaces:

(1) EPCA uses thermal efficiency as the descriptor for reporting the efficiency value of commercial warm air furnaces. The test standard ANSI Standard Z21.47, referenced by ASHRAE/IES Standard 90.1 for gas-fired furnaces, defines a thermal efficiency whose value is calculated by the flue loss method, resulting in a value that is customarily called combustion efficiency in the Heating, Ventilation and Air-Conditioning and Water Heating (HVAC & WH) industry. Also, the test standard UL Standard 727 referenced by ASHRAE/IES Standard 90.1 for oil-fired furnaces specifies the determination of a flue loss during the combustion test under steady state conditions resulting similarly in a value for combustion efficiency. Based on the fact that the combustion efficiency values are calculated by the referenced test standards, should the Department interpret the EPCA efficiency descriptor ''thermal efficiency'' to have the same meaning that ''combustion efficiency'' has in common technical use?

(2) The referenced test standard for oil-fired furnaces, UL Standard 727, does not provide a calculation procedure for the determination of flue loss. Should DOE designate the flue loss calculation procedure from the Hydronics Institute Testing and Rating Standard for Heating Boilers, the referenced test standard for oil-fired boilers, for calculating flue loss?

(3) Should DOE provide a procedure specifically for testing condensing furnaces?

Attendees at the April 1998 workshop provided comments and input on these issues and the California Energy Commission (CEC) provided additional written comments afterwards. These comments helped to further clarify the issues. Section II, Discussion, will cover them in more detail.

After the April 1998 workshop, the Department and NIST worked towards addressing the identified issues for commercial warm air furnaces. A set of recommendations resulted from that work, and NIST developed a summary report of the recommendations. The summary report formed the basis for discussions during the October 18 workshop, which enabled the Department to elicit further views and information from interested parties. The summary report included draft rule language for commercial warm air furnaces.

C. The Proposed Rule

In today's proposed rule the Department proposes energy efficiency test procedures for commercial warm air furnaces. In formulating these test procedures, the Department has considered both oral and written comments, and has incorporated recommendations where appropriate. Section II below contains the reasons for incorporating or not incorporating any significant recommendations. The Department will soon issue separate notices of proposed rulemaking regarding test procedures for commercial water heaters, boilers and air conditioners.

Today's proposed rule also contains compliance, certification, enforcement and certain other general provisions that would apply to all covered commercial heating, air conditioning and water heating equipment. The Department intends to promulgate a single set of provisions on these subjects for all classes of such equipment, and therefore the other notices proposing test procedures for such equipment will not address these subjects.

II. Discussion

A. General

This section discusses the main test procedure issues identified for commercial warm air furnaces and certification and enforcement issues for all covered commercial heating, air conditioning and water heating equipment. The furnace test procedure issues are discussed in subsection (B) ''ASHRAE/IES Standard 90.1 Referenced Furnace Test Standards,'' subsection (C) ''Definition of Thermal Efficiency for Furnaces,'' and subsection (D) ''Procedures for Measuring Flue Losses of Oil Furnaces and Incremental Efficiency of Condensing Furnaces.'' Subsection (E) addresses the certification and enforcement issues for commercial heating, air conditioning and water heating equipment generally.

B. ASHRAE/IES Standard 90.1 Referenced Furnace Test Standards

EPCA requires that the testing procedures for measuring the efficiency of commercial warm air furnaces must be those generally accepted industry testing procedures or rating procedures that were developed or are recognized by the American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc., as referenced in ASHRAE/IES Standard 90.1 and that were in effect on June 30, 1992. Also, if such an industry test procedure or rating procedure for commercial warm air furnaces is amended, the Secretary of Energy must adopt such revisions unless the Secretary determines that to do so would not produce test results which reflect energy efficiency, energy use, and estimated operating costs, or that the procedures would be unduly burdensome to conduct.

The version of ASHRAE/IES Standard 90.1 in effect on June 30, 1992 references two industry test standards: one for gas-fired furnaces, the American National Standard Institute (ANSI) Standard Z21.47–1987 (ANSI Standard Z21.47); and the other for oil-fired furnaces, Underwriters Laboratory (UL) Standard 727–1986 (UL Standard 727). Since 1989, both industry test standards have been revised several times. The revised ANSI Standard Z21.47–1987 has resulted in ANSI Standard Z21.47–1993, and the revised UL Standard 727–1986 in UL Standard 727–1994. Also, ASHRAE revised ASHRAE/IES Standard 90.1–1989 itself *via* several addenda: 90.1b, 90.1d, and 90.1e in 1992; 90.1c, 90.1g, and 90.1i in 1993; and 90.1m in 1995 and 90.1n in 1997. Two of the addenda contained revisions related to warm air furnaces: Addendum 90.1b updated the referenced furnace test standards to their most up-to-date versions in 1992, and Addendum 90.1i revised the Table (Table 10.9 in ASHRAE/IES Standard 90.1) containing the Standard Rating Conditions and Minimum Performance with respect to warm air furnaces. Currently, a major revision to ASHRAE/IES Standard 90.1–1989, designated as ASHRAE/IES Standard 90.1–1989R, is going through the ASHRAE public review process. Once ASHRAE formally completes revisions to ASHRAE/IES Standard 90.1, the Department intends to either amend its test procedure as necessary to make it consistent with the amended version of ASHRAE/IES 90.1, or determine by rule that doing so would not meet certain EPCA requirements (for example, it would be unduly burdensome to conduct).

Regarding the two industry test standards revised after June 30, 1992, there is no change in the energy performance test section of either standard from its prior version. Therefore, the Department proposes to incorporate by reference the latest versions of the two referenced test procedures. These test standards are ANSI Standard Z21.47–1993 for gas-fired central furnaces and UL Standard 727–1994 for oil-fired central furnaces.

C. Definition of Thermal Efficiency for Furnaces

EPCA specifies the energy standard levels and values for commercial warm air furnaces in terms of thermal efficiency. Section 342(a)(4)(A)–(B), 42 U.S.C. 6313(a)(4)(A)–(B). The test standard ANSI Standard Z21.47 (for gas-fired furnaces) specifies that the thermal efficiency for a furnace is to be computed by a formula defined as ''100 percent minus percent flue loss,'' and UL Standard 727 (for oil-fired furnaces) defines a maximum allowable flue loss (which is not to exceed 25 percent) in its combustion test section. Other than the flue loss requirement, UL Standard 727 does not provide for or require the calculation of either efficiency or output. However, with the measured flue loss, one can calculate an efficiency using the formula as specified in ANSI Standard Z21.47. The efficiency as calculated by the formula in ANSI Standard Z21.47 (and defined as thermal efficiency in ANSI Standard Z21.47) is customarily called the combustion efficiency of fossil-fueled equipment. The statute does not provide a definition for the term ''thermal efficiency.''

These points were discussed during the April 1998 workshop. Conventionally, the definition for ''thermal efficiency'' is the useful output of a device divided by its input, expressed in percent. It is related mathematically to the combustion efficiency (also expressed in percent) by the equation ''Thermal Efficiency (percent) = Combustion Efficiency (percent) − Jacket Loss (percent),'' where the combustion efficiency is equal to ''100 percent minus flue loss (percent).'' The discussion concerned whether the Department should include a jacket loss measurement, in addition to the flue loss, in the test procedure.

GAMA (Page 158, April 14, 1998 Workshop Transcript) asserted that (1) the thermal efficiency in the statute actually referred to the classical definition of combustion efficiency, (2) thermal efficiency was specified because it was so called in the referenced test procedure, and (3) it meant 100 percent minus flue loss (percent). GAMA believes that defining the term thermal efficiency to be ''combustion efficiency minus jacket loss'' would change both the intent and the stringency of the requirements that currently exist in ASHRAE/IES Standard 90.1 and in EPCA. GAMA further stated that there is an additional requirement in the proposed ASHRAE/IES Standard 90.1–1989R limiting the jacket loss of the furnace to less than 0.75% of the input rating. GAMA stated that this prescriptive requirement was an outgrowth of discussions between the industry and the ASHRAE committee about defining a seasonal measure of efficiency for commercial warm air furnaces, and the resulting compromise was to continue to specify a thermal efficiency term that is 100 percent minus flue losses, to be followed by several additional prescriptive requirements that relate to off-cycle losses, for example. Consequently, GAMA stated that it would be strongly opposed to any suggestion to define the term thermal efficiency as [100 percent − flue loss (percent) − jacket losses (percent)].

Rheem (Page 162, April 14, 1998 Workshop Transcript) pointed out that the efficiency definition also raises a functional issue. To achieve EPCA efficiency values under a traditional definition of thermal efficiency (*e.g.,* an 80 percent thermal efficiency as determined by reducing the combustion efficiency by the jacket loss) could result in flue gas condensation, which causes corrosion and premature failures.

Based on the above discussion, the Department understands that the consensus of the attendees was that in the test procedure the term ''thermal efficiency,'' as specified in the statute for commercial warm air furnaces means what is commonly defined as ''combustion efficiency'' in other contexts. The Department believes that, consistent with adopting industry test standards referenced in ASHRAE/IES Standard 90.1–1989, the statute's intent is to assign the same meaning to the term ''thermal efficiency'' as its definition in the corresponding referenced standards. Therefore, the Department believes that the term thermal efficiency, when used as the energy standard descriptor for commercial warm air furnaces, should be calculated as 100 percent minus percent flue loss, as was specified in the referenced ANSI Standard Z21.47. When the Department proposed this approach during the October 1998 workshop, there was no objection from the participants. Accordingly, the Department proposes today to explicitly define the term thermal efficiency of commercial warm air furnaces as equal to 100 minus the percent flue loss. This proposal would avoid any possible future confusion regarding the meaning of the term thermal efficiency when used in the test procedure for commercial warm air furnaces.

D. Procedures for Measuring Flue Losses of Oil Furnaces and Incremental Efficiency of Condensing Furnaces

1. Flue Loss Calculation for Oil-Fired Furnaces

As stated above, the referenced test standard for oil-fired furnaces, UL Standard 727, does not provide a calculation procedure for the determination of flue loss. However, a value for the percent flue loss is needed for determining the efficiency. At the April, 1998 workshop, the Department suggested the use of the flue loss calculation specified in the ASHRAE Standard 90.1 referenced test standard for oil-fired boilers—the 1989 edition of the Hydronics Institute Testing and Rating Standard for Heating Boilers—for calculating the flue loss of an oil-fired furnace. Since the type of flue gas data required and the formulas/equations used for the flue loss calculation are identical for any oil-fired equipment, the calculation procedure as specified in the Hydronics Institute test standard for an oil-fired boiler is directly applicable to an oil-fired furnace. There were no comments opposing the Department's suggestion during the Department's workshops held during April and October 1998.

For the above reasons, the Department is proposing as the calculation procedure for percent flue loss for oil-fired furnaces the procedure in (1) sections 8.2, 11.2, and 11.2.1 of the 1989 Hydronics Institute Testing and Rating Standard for oil-fired boilers, and (2) those parts of accompanying Forms 715 and 721 which specify the items to be measured and calculated to obtain flue loss, and which are not related to steam, water or natural gas.

2. Condensing Furnaces

Participants raised and discussed the issue of testing a condensing furnace (a warm air furnace designed to condense part of the water vapor in the flue gases and equipped with a means of collecting and draining this condensate) during the Department's April 1998 workshop. ASHRAE/IES Standard 90.1 and the two test standards referenced by ASHRAE/IES Standard 90.1 do not specifically provide test conditions for testing a condensing furnace.

Attendees at the April 1998 workshop from the furnace industry (GAMA, York International, and Lennox) stated that there are very few, if any, commercial unitary or rooftop condensing furnaces on the market, and it is difficult to provide for the requirements of a condensing furnace in a roof-top installation. Therefore, they stated, it is not necessary to provide a DOE test

procedure for testing the condensing feature of a commercial furnace at present.

York (April 14, 1998 Workshop Transcript, Page 220) stated that condensate measurement should not be specified for condensing boilers and furnaces. York stated that in general, rooftop combustion equipment will not operate under condensing conditions, because of the difficulty of condensate disposal. York felt that in the future, condensing furnaces might become a possibility as the technology evolves. York stated that currently, most rooftop units have an efficiency of 80 percent or less, and they operate at flue temperature above condensing range.

Lennox (April 14, 1998 Workshop Transcript, Page 220) agreed with the York comment and emphasized that although condensing units have been on the market for a long time, none of them, for all intents and purposes, are unitary products sold for commercial applications. Lennox stated that this is due to a number of problems, and if these problems were to be solved through a technological breakthrough, then a test procedure would be appropriate.

During the October workshop, Natural Resources Canada (October 13, 1998 Workshop Transcript, Page 285) stated that the condensate collected from the condensing furnace should be only what condenses within the appliance itself and not beyond the heat exchanger.

The Department disagrees with the observation from the furnace industry workshop attendees that DOE's adoption of a test procedure for determining the improvement to the efficiency due to the condensing feature of a condensing furnace is unwarranted at the present time. Since a condensing furnace is likely to provide a significantly higher efficiency, the Department believes that a test procedure should be in place in order to have a readily available, accurate method for testing these more efficient furnaces in the future, even if no commercial condensing furnaces are on the market at the present time. In addition, a test procedure is needed for evaluating this design option during any future consideration of possible revisions to the efficiency standard.

Although the ASHRAE/IES Standard 90.1 does not specify a test procedure for measuring the energy efficiency of a condensing furnace, an industry test procedure—ASHRAE Standard 103–1993—does exist for residential condensing furnaces and industry has been using it for over a decade. The Department believes that the method of collecting and measuring the quantity and the temperature of the flue condensate under steady state conditions at the maximum rated input over a 30 minute test period, should also be applicable to a commercial condensing furnace. Since the Department sees no technical problems in its application to commercial warm air furnaces, the Department is proposing to adopt the test procedure specified in section 7.2.2.4, 7.8, 9.2 and 11.3.7 of ASHRAE Standard 103–1993 for determining the increment in energy efficiency due to the condensing feature of a condensing furnace. In adopting the test procedure, a slight modification is applied to the equation in Section 11.3.7.2 of ASHRAE 103–1993 for steady-state heat loss due to hot condensate flowing down the drain. In the aforementioned section, the assumed indoor temperature is 70°F, and the average outside temperature is specified as 42°F. The modification replaces both of these temperatures with the actual temperature of the test area, to be consistent with Section 2.2.8 of ANSI Z21.47–1993, during the steady-state thermal efficiency test.

The Department agrees with the recommendation from Natural Resources Canada that the condensate from the unit be separated from the condensate from the flue pipe. The referenced test procedure in ASHRAE Standard 103–1993 requires an installation which prevents the flue pipe condensate from flowing back into the unit. (See section 7.2.2.4 of ASHRAE Standard 103–1993).

E. Sampling, Certification and Enforcement for Commercial Heating, Air Conditioning and Water Heating Equipment

1. Background and Public Comments

a. Purpose. The purpose of establishing regulations concerning sampling, certification and enforcement is to provide reasonable assurance that covered commercial equipment are appropriately tested and actually comply with applicable energy conservation standards. In today's rule, the Department proposes a set of provisions concerning compliance certification and enforcement procedures for certain commercial equipment. To help assure compliance with energy conservation standards, the rule would require that each manufacturer use one of the specified methods for determining the efficiency of each basic model of its commercial heating, air conditioning and water heating equipment, and certify that the basic models comply with the applicable energy conservation standards. In addition, the rule specifies enforcement procedures for use in resolving any disputed performance claims for such commercial equipment.

b. Sampling. For consumer products, as described in 10 CFR part 430, manufacturers must test a sample of each basic model of a covered product to establish its efficiency level and its compliance with the applicable energy efficiency descriptor value specified in the Act. The test procedure for each product incorporates a sampling plan designed to give a reasonable assurance that the true mean performance of the equipment being manufactured and sold meets or exceeds the applicable value, and is accurately determined. The mean performance is a critical performance characteristic of a covered product because it determines the overall energy usage of a covered product population, and thus the impact of the product on national energy consumption. Individual units produced from a single design may vary in energy efficiency, however, for a number of valid reasons, including variability in manufacturing. The Department must balance the risk to the public of purchasing a non-complying unit with the burden on the manufacturer in conducting performance testing to assure compliance, to provide adequate protection for the public without imposing an excessive testing burden on the manufacturers. Given that performance testing of every unit of a covered product would be prohibitively expensive and time-consuming, the manufacturer must estimate the average performance of the basic model using a sample drawn from the population. The method for estimating equipment performance from a small sample of a large population is called a sampling plan.

c. Public Comments and Recommendations. At the April 1998 workshop, the Department presented for discussion compliance certification and enforcement sampling procedures for commercial equipment that were similar to those established in the past for consumer products. These require manufacturers to certify compliance based on testing under strictly prescribed statistical sampling schemes designed to assure, with reasonable probability, that the average efficiency of each product sold meets the applicable standard. Enforcement involves a similar, but not identical statistical sampling arrangement. The advantage of this approach is that manufacturers can provide adequate assurance of compliance without having to test every single unit they produce.

When presented with the concept of applying a prescribed statistical sampling method to certifying commercial equipment, the participants at the April 1998 workshop made the following general observations:

i. A workable uniform sampling method covering the wide variety of commercial equipment would be difficult, if not impossible, to formulate. This is due to the large number of design variations and small numbers of identical units for some equipment.

ii. The California Energy Commission (CEC) and several voluntary industry associations already have effective efficiency certification programs in place that leave the sample design to the manufacturer.

iii. With adequate independent verification and penalties for improper certification by a verification program, prescribing the sampling schemes is unnecessary, since the manufacturers would have an incentive to design them in each case so as to limit the risk of being found to be out of compliance.

With these observations in mind, the Department investigated the certification programs of the State of California, the Air Conditioning and Refrigeration Institute, the Gas Appliance Manufacturers' Association, and the Hydronics Institute. Participation in these industry programs, generically referred to as Voluntary Independent Certification Programs (VICP's), could help provide assurance of accurate performance claims. Manufacturers have been participating in VICP's primarily for marketing reasons, since they feel that demonstrating the performance of their equipment via an independent testing agency adds legitimacy to their performance claims. VICP's are typically operated by industry associations, and the costs of the programs are covered by fees paid by the participating manufacturers. Manufacturers certify the performance metrics of their equipment to the VICP, the VICP publishes a directory that lists performance values of equipment offered for sale by each manufacturer, and the VICP periodically verifies the performance claims. When the VICP determines that a model performs below its rated level, generally the manufacturer must either re-rate the product or cease manufacturing it and have it removed from the directory (*i.e.*, ''obsolete'' the model). A manufacturer's failure to meet such conditions typically results in its expulsion from the VICP. All of these programs entail some form of the following: (1) Certification by a manufacturer to a VICP of the efficiency level of each of its covered products; (2) the VICP's independent verification or supervision of levels claimed by the manufacturer; and (3) penalties imposed by the VICP to discourage inaccurate ratings and ensure that certified efficiencies would be reliable. On the other hand, some manufacturers do not participate in VICP's, and no program exists at present for commercial warm-air furnaces, so the Department would need to specify its own certification testing and verification arrangement, at least for equipment not otherwise covered by a VICP.

The Department received additional comments during, and subsequent to, the second public workshop which was held on October 18, 1998. These comments helped refine the proposed compliance certification and enforcement procedures to take advantage of current voluntary industry certification programs and allow alternate procedures for determining compliance.

At the second workshop, commenters suggested that DOE consider the following elements in the proposed rule:

- After DOE initially approves a VICP, in accordance with the specified criteria, a VICP should not require re-approval by DOE unless there is a change within the program. In case of such a change, the program would inform DOE promptly and apply for a re-approval. Another suggestion was that DOE approve a VICP for a pre-determined length of time (suggested time frame: 12 months to 5 years), during which DOE could revoke approval at any time if warranted.
- Participation in a VICP should be a basis for establishing both (1) the validity of product efficiency representations, and (2) compliance with minimum standards.
- The ''obsoleting'' of a model should not automatically follow its ''delisting'' from a VICP product directory, if the basic model falls short of the certified efficiency but still meets the minimum efficiency standards prescribed by EPCA.
- A VICP should monitor the performance data and provide this data to DOE.
- For Non-Participants in VICP's, review of manufacturer self-testing by a licensed Professional Engineer to assure compliance and the accuracy of efficiency representations by itself is not adequate. They should conduct performance testing or verify the testing results by using a qualified independent laboratory.
- DOE should approve alternative methods other than testing for efficiency determinations, but the Department should guard against public disclosure of proprietary methods, which could harm individual manufacturers.
- An alternative method for efficiency determination should not require DOE approval in the case of VICP participants.
- Certification provisions should afford manufacturers the discretion to certify more conservative (*i.e.,* lower) efficiency ratings than the mean efficiency values predicted by the manufacturers' tests or calculations.
- Enforcement provisions should restrict the definition of units available for testing to units which are available for commercial distribution within the U.S.
- Enforcement testing should require samples of no more than two units initially, followed by up to two more units if the first two fail.
- The compliance statement for a basic model should be a one-time report to DOE which either the manufacturer/private labeler or a VICP acting on their behalf can submit.

Written comments underscored some of these observations and added others. The Air-Conditioning & Refrigeration Institute (ARI) (October 13, 1998 Workshop, Written Comment #9) requested that the regulations allow for the rerating of basic models that, when tested, fall short of their certified efficiency but still meet the minimum efficiency standards. ARI also requested that re-approval of a VICP should only be required when there is a change in the program, or after five years, whichever comes first. On the issue of enforcement testing, ARI supported starting with two test samples instead of four. They questioned the need for a compliance statement being submitted to DOE for manufacturers who participate in a VICP, since the VICP will have to be approved by DOE, and manufacturers' ratings will be verified through the VICP.

Written comments from the Gas Appliance Manufacturers Association (GAMA) (October 13, 1998 Workshop, Written Comment #10) also requested that the rerating of a product which meets the energy efficiency standard prescribed by EPCA, but tests lower than the rating submitted by the manufacturer, be allowed. GAMA also felt that periodic re-approval of a VICP should not be required, and that enforcement testing should entail an initial sample of two units. GAMA also questioned the need for a compliance statement for VICP participants.

Based upon the comments received during and after the public workshops, the Department proposes requiring manufacturers to certify compliance based on testing, and to either conduct

the testing under a DOE-prescribed sampling scheme, or participate in a VICP approved by the Department. Each option would afford the opportunity to utilize alternative efficiency determination methods. In this way, the Department proposes to minimize additional testing burdens on manufacturers of commercial equipment, while maintaining a certification procedure which is fair to all manufacturers, and which provides reasonable assurance that the established minimum performance standards are being met. The proposed procedures, described in the following sections, include a basic certification program, a provision for VICP's, and an enforcement testing plan. The Department anticipates that this proposal would not require any additional testing beyond what manufacturers who are participating in industry certification programs conduct already, and it would involve a similar level of testing by manufacturers who elect not to participate in VICP's.

2. Proposed Certification and Enforcement Procedures

a. Certification Procedures. The Department proposes to require each manufacturer to certify to the Department the efficiencies of commercial equipment it manufactures, either directly or through a VICP. This would be accomplished by submitting both a compliance statement, a one-time submittal, and a certification statement for each basic model of covered equipment. The manufacturer would be required to maintain records of all test results and related analysis used in the determination of the mean energy performance. Today's rule includes possible formats for certifying efficiency to the Department.

b. Basis for Certification: Methods for Determining Efficiency. Underlying each certification to the Department would be the manufacturer's determination of a basic model's energy efficiency or usage. The proposed rule would require a manufacturer to make such determination either by testing the basic model, or by calculating its energy efficiency or use through use of an alternative efficiency determination method (AEDM). The specific requirements for testing and AEDMs would differ, however, depending on whether a manufacturer's covered products were included in a VICP approved by the Department.

An AEDM is an analytical procedure, such as a computer simulation or other approach, that can determine the energy efficiency or use of a product. The Department proposes to permit the use of AEDMs due to the potentially large number of basic model variations, and the burden that would result if the Department required that each basic model be tested to determine its efficiency. But a manufacturer could use an AEDM to establish the energy efficiency or use of covered equipment only if the ADEM had been verified and validated with measured data, *i.e.,* using test results. Thus, although the Department proposes to permit the use of AEDMs, and would not require the testing of every basic model, all efficiency determinations would be *based on* testing.

The proposed requirements for testing would apply both to tests used directly to determine the efficiency of a basic model, and to tests used to validate an AEDM. All manufacturers would be required to (1) perform testing in accordance with the applicable DOE test procedure, (2) test randomly selected units representative of the basic model, (3) have their testing and rating results meet industry standards for accuracy for the equipment being rated, and (4) test a sufficient number of units to produce an accurate estimate of the mean efficiency of all units manufactured of the basic model. The proposed rule allows VICP participants substantial discretion in this last respect, by permitting them to use any valid statistical method to determine the number of units to be tested and the mean efficiency. For non-participants, the Department is proposing stricter, prescribed sampling procedures, since their efficiency ratings will not be subject to routine verification testing.

As to AEDMs, in addition to the general requirements stated above, the Department would require any manufacturer employing an AEDM to maintain written documentation of its validation of the AEDM. In addition, if the equipment being rated is not listed with a VICP approved by the Department, validation would require demonstration that the results from using the AEDM are consistent with the results of actual tests of at least three basic models, and the manufacturer would be required to obtain advance approval of the AEDM by the Department. The manufacturer would apply for such approval in writing and submit all relevant information related to the calculations and calibration procedures.

c. Voluntary Independent Certification Program. Participation in a VICP would allow a manufacturer an alternative to (1) following the DOE sampling plan, and (2) required DOE approval of an AEDM. A VICP participant must still test its products and validate its AEDM, and must file a compliance statement and certification report, either directly to the Department, or via the VICP on the manufacturers' behalf.

The Department proposes that it would approve VICP's that meet the following requirements:

- The VICP publishes in written form the procedures for the operation of the certification program, and permits all manufacturers of products covered by the program to participate so long as they comply with requirements concerning operation of the program.
- To participate in the VICP, a manufacturer would be precluded from distributing any basic models of equipment covered by the program unless it had reported to the VICP the energy efficiency or usage, as applicable, of that basic model, based on measurement of the basic model's performance.
- The VICP publishes or otherwise makes available to the general public and to the Department, these efficiency ratings.
- The VICP conducts periodic verification testing on listed equipment, such that the performance of each basic model is checked and compared to its rated efficiency value at least once every five years.
- The VICP testing personnel select units for verification testing randomly from manufacturer's stock.
- The VICP conducts its verification testing at an independent laboratory, or under the supervision of independent personnel, in accordance with the prescribed DOE test procedures.
- The VICP verification testing meets industry standards for the accuracy of testing and of rating results for the equipment being tested, and the program satisfactorily describes how it meets these standards.
- The VICP has an appropriate standard for determining whether the efficiency rating a manufacturer claims for a product is valid.
- The VICP provides to the manufacturer copies of all records of completed verification testing performed on the manufacturer's covered equipment.
- The VICP requires that, if a basic model fails verification testing conducted by the VICP, the manufacturer of the basic model must remove it from production and sale if the verification testing results show it is not in compliance with EPCA efficiency standards, or correctly re-rate it if it complies with such standards. The program must also provide that a participating manufacturer will be expelled from the VICP if it does not

comply with such requirements, and that the VICP will report to the Department verification test results that find the performance of a basic model not to meet EPCA efficiency standards. (A basic model ''fails'' verification testing when the VICP has compared the basic model's efficiency rating resulting from completion of that testing with the efficiency rating claimed by the manufacturer, and has determined that the rating claimed by the manufacturer is not valid.)

• The VICP provides for penalties or other incentives to encourage manufacturers to report accurate and reliable efficiency ratings.

• The VICP provides to the Department on an annual basis, summary data that shows the results of verification testing on each basic model, including the manufacturer's energy efficiency or use rating for the model, the measured energy efficiency or use from the verification testing , and either the energy conservation standard for the tested basic model or a description of the model sufficient to enable the Department to determine the standard that applies to the basic model. (See discussion in section 3 below)

Voluntary Independent Certification Programs which meet the above requirements could request the Department's approval by submitting documentation substantiating their compliance directly to the Department. Approval would remain in force for five years, unless material changes occur in the program. In the event of changes, the VICP administrator would be required to notify the Department, which may at that time rescind the approval. At the end of any such five-year period, the VICP could request re-approval.

The VICP could submit compliance and certification paperwork to the Department on the behalf of participating manufacturers.

d. Manufacturers Not Participating in a VICP. As discussed above, the Department proposes requiring manufacturers not participating in VICP's to meet more specific criteria for testing and AEDMs. With regard to testing, the sampling procedure referred to above would require a manufacturer to select a sample of sufficient size to ensure that:

• Any represented value of energy efficiency is no greater than the lower of the mean of the sample, or the lower 95 percent confidence limit of the true mean divided by 0.95; and,

• Any represented value of energy usage is no less than the greater of the mean of the sample, or the upper 95 percent confidence limit of the true mean divided by 1.05.

The Department also proposes that manufacturers of commercial heating, air conditioning and water heating equipment who do not participate in a VICP approved by the Department, must conduct all performance testing of covered products at an independent laboratory, or under the supervision of independent testing personnel. This requirement would provide greater assurance of the accuracy and reliability of such testing. It is also warranted by the lack of on-going verification of the efficiency ratings of non-participants in VICPs, and by DOE's proposal that verification testing by VICPs be conducted by an independent facility or under independent supervision. DOE is uncertain, however, as to whether sufficient numbers of independent testing laboratories and personnel exist to enable manufacturers to satisfy this requirement, and whether it would otherwise impose undue burdens on manufacturers. Therefore, the Department encourages interested parties to address these issues in particular, including whether the Department should modify or omit this requirement in the proposed rule.

e. Enforcement. The Department proposes that the enforcement provisions for commercial heating, air conditioning and water heating equipment would be for the most part virtually identical to those in 10 CFR Part 430, except for the sampling plan for enforcement testing. The proposed sampling plan for enforcement testing would require a manufacturer to provide to DOE an initial sample size of two units for enforcement testing, with a manufacturer's option of testing an additional two units, for a maximum sample size of four units. The Department could allow an exception to the sample size for very large units on a case-by-case basis, such that only a single unit would be tested. Manufacturers would be permitted to request such an exception from the Department.

Participation in a VICP would not affect a manufacturer's obligations as described in the enforcement regulations.

3. Accommodation for Manufacturing Tolerances, Measurement Uncertainty and Small Sample Sizes

As indicated above, VICP's conduct verification testing to determine if a manufacturer's rating of a basic model is accurate. The testing frequently consists of tests on a single unit, or at most two units, of the model. Following the tenets of probability, the measured energy efficiency or use derived from testing any small sample, such as one or two units of a basic model, may be higher or lower than the average for the basic model population as a whole. These variations may be due to manufacturing tolerances and/or measurement uncertainty. As a result, VICP's frequently employ a tolerance band by which a basic model is deemed not to fail verification testing unless its performance measured from the testing is below the manufacturer's rating for the model by more than a set percentage, such as 5 percent. The justification for this tolerance band is to avoid a false conclusion that a basic model has been over-rated, based on test results for a small sample.

The Department has generally required that compliance with the energy conservation standards in EPCA be determined by whether the mean performance of the entire population of a covered product meets the minimum standard applicable to that product. Under this approach, an individual unit of a product could have a measured efficiency less than the applicable minimum standard, due for example to variations in manufacturing and/or to measurement uncertainty, but the product would be in compliance as long as the average efficiency of the basic model population conforms to the minimum standard. Following once again the tenets of probability, this means that if a sufficiently large number of units of a basic model were tested, the mean energy efficiency would meet the standard. To allow testing of small samples to establish compliance, the appliance standard rules in 10 CFR Part 430 incorporate specific statistical procedures for rating products for energy efficiency and use. In this rulemaking, the Department proposes to require use of such strict statistical procedures by manufacturers to rate products not covered by a VICP. But it is not proposing them for compliance determinations for products covered by VICP's, largely because verification testing by a VICP helps insure accurate efficiency ratings.

Although the Department recognizes that some accommodation by a VICP is appropriate to allow for reasonable levels of manufacturing variation and measurement uncertainty in covered products, it is concerned that manufacturers might take advantage of a tolerance band on verification testing results by consistently over-rating the energy use or efficiencies of basic models. Such a problem might be indicated, for example, if verification test results were consistently skewed on the side of over-rating of basic models, rather than exhibiting a normal distribution whereby the proportion of

the verification test results that were higher than the rating submitted by the manufacturer was approximately equal to the proportion that were lower. The Department is concerned both that non-complying products might be rated as being in compliance and that complying products might be over-rated.

To address these concerns, today's proposed rule contains provisions to enable the Department to monitor the extent, if any, to which the energy efficiency or use of products covered by VICP's may be over-rated as a result of tolerance bands for verification testing results. These provisions would require VICP's to submit to the Department annually summary data on verification testing results. Specifically, the proposed rule would require VICP's to report the following for each verification test or round of verification tests on a basic model: (1) The model's energy efficiency or use as measured by the testing, (2) the energy efficiency or use rating submitted by the manufacturer for that basic model (*i.e.,* the rating that was evaluated by the testing), and (3) either the energy conservation standard for that basic model or a brief description of the basic model that would enable the Department to determine the applicable standard. The data would not include manufacturer identification. If it appeared to the Department from this information that over-rating was occurring, the Department would consider one or more of the following actions:

- Pursue modification of all or part of the VICP's provisions for verification testing;
- Revoke the Department's certification of the VICP; or
- Pursue enforcement procedures.

III. Procedural Requirements

A. Review Under the National Environmental Policy Act of 1969

EPCA prescribes energy efficiency standards and test procedures for commercial equipment, and in today's rule, the Department proposes to implement these requirements for commercial warm air furnaces and, to some extent, commercial heating, air conditioning and water heating equipment generally. The Department has reviewed the proposed rule under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321 *et seq.*, the regulations of the Council on Environmental Quality, 40 CFR parts 1500–1508, the Department's regulations for compliance with NEPA, 10 CFR Part 1021, and the Secretarial Policy on the National Environmental Policy Act (June 1994). Implementation of the Proposed rule would not result in environmental impacts. The Department has therefore determined that the proposed rule is covered under the Categorical Exclusion found at paragraph A6 of appendix A to subpart D of the Department's NEPA Regulations, which applies to rulemakings that are strictly procedural. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

B. Review Under Executive Order 12866, ''Regulatory Planning and Review''

Today's rule has been determined not to be a ''significant regulatory action,'' as defined in section 3(f) of Executive Order 12866, ''Regulatory Planning and Review.'' 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. § 603, requires the preparation of an initial regulatory flexibility analysis for every rule which, by law, the agency must propose for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative impacts.

The Small Business Administration considers an entity to be a small business if, together with its affiliates, it employs fewer than a threshold number of workers specified in 13 CFR part 121. The estimated number of affected small businesses are discussed below.

- The threshold number of employees for SIC classification 3585, which includes warm-air furnaces, is 750. The Department estimates that between 25 and 39 firms manufacture warm-air furnaces, and of these the majority have fewer than 750 employees and are considered small businesses. The number of these small businesses that manufacture commercial warm-air furnaces covered by the EPACT standards (with capacities of 225,000 Btu per hour and above) could be smaller.
- The threshold number for SIC classification 3585, which includes air conditioners and heat pumps, is also 750. The Department estimates that approximately 31 firms manufacture covered commercial air conditioners and heat pumps, and of these, 14 are considered small businesses.
- The threshold number for SIC classification 3433, which includes commercial packaged boilers, and other non-electric heating equipment, is 500. The Department estimates that no more than 29 firms manufacture commercial packaged boilers, and of these, the majority are considered small businesses. The number of small businesses that manufacture commercial-sized packaged boilers covered by the EPACT standards (with capacities of 300,000 Btu per hour and above) could be smaller.
- The threshold number for SIC classification 3589, which includes commercial water heaters, along with other service industry machinery not elsewhere classified, is also 500. The Department estimates that approximately 25 firms manufacture water heaters and unfired hot water storage tanks, and of these the majority are considered small businesses. The number of small businesses that manufacture commercial-sized equipment covered by the EPACT standards could be smaller.

EPCA establishes efficiency standards for commercial heating, air conditioning and water heating equipment and requires the Department to prescribe test procedures that are accepted by industry and referenced in ASHRAE/IES Standard 90.1. For the most part, EPCA specifies the standards and test procedures incorporated in today's proposed rule. Therefore, any costs of complying with them are imposed by EPCA and not the rule. Moreover, today's proposed rule codifies testing procedures that are already generally employed by manufacturers, both large and small. The proposed rule also prescribes procedures for manufacturers to certify compliance with the standards and test procedures legislated by EPCA, using powers which were originally granted to the Secretary under NAECA, and extended by EPACT to require manufacturers of covered commercial equipment to submit information and reports for a variety of purposes, including insuring compliance with requirements. These certification requirements, as well as proposed enforcement provisions, are new for manufacturers of commercial equipment and will affect both small and large enterprises.

The Department has drafted the proposed rule to minimize the burden of compliance for manufacturers, and the rule relies heavily on current industry practice. Statistical sampling is permitted for testing, so as to minimize the testing burden. Manufacturers that participate in VICP's are also afforded considerable latitude in designing

sampling plans to suit their individual circumstances, consistent with the requirement for reasonable degrees of reliability. To minimize testing burden further, manufacturers are permitted to use analytical procedures, such as computer simulation, to determine the efficiencies of their products. Manufacturers are also given the option of certifying their products to the Department independently or through trade associations, which can minimize costs by reporting on large numbers of individual products at one time. Finally, the certification forms and enforcement procedures are similar to those already required for consumer products, and several of the same manufacturers produce both consumer products and commercial equipment.

The cost of establishing compliance will depend on the number of basic models a manufacturer produces. The cost of completing the compliance certification form should be negligible once testing has occurred. Testing cost depends on unit size, but could amount to several thousands of dollars per basic model. To the extent that manufacturers must already test their products for efficiency to assure that they meet the existing statutory efficiency standards, or for any other reason, they will not incur new costs in complying with today's proposed rule. The Department believes that any significant economic impact will fall only on those firms which do not now routinely test their products. The Department further believes that testing is a widely accepted practice, and that companies that do not test are rare and do not represent a substantial number of small entities.

The Department has limited discretion to apply different requirements to small manufacturers. EPCA mandates uniform standards and test procedures for commercial equipment. In this regard, it is noteworthy that although EPCA contains a ''small manufacturer exemption'' for consumer appliances (42 USC 6295 (t)), it includes no such exemption for commercial and industrial equipment.

The Department invites public comment on its conclusion that the incremental costs of complying with the proposed rule (not including the cost of requirements that are directly imposed by EPCA, such as the energy efficiency standards themselves) would not impose a significant impact on a substantial number of small businesses.

D. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The proposed rule published today would not regulate the States. The proposed rule would primarily codify energy efficiency standards and test procedures already established in EPCA for commercial equipment. DOE has determined that today's rule does not have a substantial direct effect 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. No further action is required by Executive Order 13132.

E. Review Under Executive Order 12630, ''Governmental Actions and Interference With Constitutionally Protected Property Rights''

The Department has determined under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 52 FR 8859 (March 18, 1988), that this regulation would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

F. Review Under the Paperwork Reduction Act

Today's notice of proposed rulemaking would impose information maintenance and reporting requirements on manufacturers of commercial heating, air conditioning and water heating equipment. An agency may not conduct or sponsor a collection of information unless the collection displays a currently valid OMB control number. (See 5 CFR 1320.5(b)).

The proposed rule will require manufacturers to maintain records concerning their determinations of the energy consumption and efficiency of covered commercial equipment. DOE believes that this recordkeeping is necessary for implementing and monitoring compliance with energy conservation standards and testing provisions mandated by EPCA. The proposed rule would also require manufacturers to make a one-time submission of a compliance statement, and to submit certification reports for existing basic models of covered commercial equipment, within 12 months after the publication of a final rule in the **Federal Register**. A report covering a basic model need only be submitted once, stating that the manufacturer has determined that the basic model meets the applicable energy conservation standard. After the initial submission, manufacturers will have to submit a certification report for each new basic model before the model may be distributed in commerce, or to certify compliance with a new or amended standard.

The proposed collections of information are necessary for implementing and monitoring compliance with the efficiency standards and testing requirements for commercial equipment mandated by EPCA. In developing the proposed information collection requirements, DOE considered the views of stakeholders that were received at two public workshops held during April and October 1998, in written comments solicited in the notice of those meetings, and in subsequent informal contacts.

The following are the DOE estimates of the total annual reporting and recordkeeping burden imposed on the affected manufacturing firms for compliance with the proposed rule. The Department estimates that the number of hours required to comply with the reporting and recordkeeping requirements in the proposed rule is approximately 200 to 300 hours per year per firm.

- For commercial warm-air furnaces, the estimated number of covered manufacturing firms is between 25 and 39. The total annual reporting and recordkeeping burden from compliance with the proposed rule is expected to be from 5,000 to 11,700 hours (25×200 to 39×300 hours per year).
- For small and large commercial air conditioners and heat pumps, the estimated number of covered manufacturing firms is no more than 31. The total annual reporting and recordkeeping burden from compliance with the proposed rule is expected to be from 6,200 to 9,300 hours (31×200 to 31×300 hours per year).
- For commercial packaged boilers, the estimated number of covered manufacturing firms is no more than 29. The total annual reporting and recordkeeping burden from compliance with the proposed rule is expected to be from 5,800 to 8,700 hours (29×200 to 29×300 hours per year).
- For commercial water heaters and unfired hot water storage tanks, the estimated number of covered manufacturing firms is no more than 25. The total annual reporting and recordkeeping burden from compliance

with the proposed rule is expected to be from 5,000 to 7,500 hours (25×200 to 25×300 hours per year).

The above estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of information.

In developing the burden estimates, DOE considered that each manufacturer is required to comply with the statutory energy efficiency standards for each type of commercial equipment it is manufacturing on the effective date of the Act, and for each model it begins to manufacture after that date. The required certification would contain the type of information that many manufacturers already submit to voluntary programs or develop for the design or marketing of energy efficient commercial equipment. Those manufacturers should be able to comply with the certification required by the proposed rule without much additional burden. And, finally, the Department believes, based on manufacturers' statements as to their determinations of product performance, that they already maintain the records of efficiency determinations that the proposed rule would require them to keep.

The Department has submitted these proposed information collection and recordkeeping requirements to the Office of Management and Budget for review and approval under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* The OMB previously approved Appendix A to Subpart F of Part 430, ''Compliance Statement and Certification Report,'' and assigned OMB control number 1910–1400. The proposed rule would revise these forms to cover certification of commercial heating, air conditioning and water heating equipment; facilitate the use of the certification report by third party representatives of covered product manufacturers; and in an attachment, specify forms similar to those that manufacturers are currently required to submit to DOE by 10 CFR Part 430.62(a)(2).

The Department considers the information collection and recordkeeping called for in this proposed rule to be the least burdensome possible for meeting the legal requirements of EPCA and effectively enforcing the provisions of the law. However, the Department encourages public comments concerning the anticipated paperwork reporting burden. Send comments regarding recordkeeping or reporting burdens, or any other aspect of information collection, to the Department in accordance with the instructions in the **DATES** and **ADDRESSES** sections of this notice, as well as in Section IV below. Send a copy of the same comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked ''Attention: Desk Officer for DOE.''

G. Review Under Executive Order 12988, ''Civil Justice Reform''

With respect to the review of existing regulations and the promulgation of new regulations, Section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by Section 3(a), Section 3(b) of the Executive Order specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provide a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of the Executive Order requires agencies to review regulations in light of applicable standards Section 3(a) and Section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them.

The Department reviewed today's proposed rule under the standards of Section 3 of the Executive Order and determined that, to the extent permitted by law, it meets the requirements of those standards.

H. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91), the Department of Energy must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. 15 U.S.C. 788. Section 32 provides in essence that, where a proposed rule contains or involves use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards.

This rule proposed in this notice incorporates a several commercial standards which EPCA requires to be used. These include testing standards referenced by ASHRAE/IES Standard 90.1–1989 for the measurement of steady state thermal efficiency of commercial warm air furnaces. Because the Department has very limited discretion to depart from the standards referenced in ASHRAE/IES 90.1, Section 32 of the FEAA does not apply to them.

Two commercial standards incorporated in this rule are not referenced by ASHRAE/IES Standard 90.1–1989, and are thus their use is not required by EPCA. One is ASHRAE Standard 103–1993, '' Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers.'' The Department proposes to adopt portions of this standard to obtain a suitable test procedure for condensing furnaces, which are not covered by ASHRAE/IES Standard 90.1–1989. The other is the Hydronics Institute (HI) Standard ''Testing and Rating Standard for Heating Boilers,'' which specifies a flue loss calculation procedure for oil-fired equipment, also not covered by ASHRAE/IES Standard 90.1–1989. The Department has evaluated these two standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the Federal Energy Administration Act, *i.e.,* that they were developed in a manner that which fully provides for public participation, comment and review.

As required by section 32(c) of the Federal Energy Administration Act, the Department will consult with the Attorney General and the Chairman of the Federal Trade Commission concerning the impact of these two standards on competition, prior to prescribing a final rule.

I. Review Under Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') requires that the Department prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. The budgetary impact statement must include: (i) Identification of the Federal law under which the rule is promulgated; (ii) a qualitative and

quantitative assessment of anticipated costs and benefits of the Federal mandate and an analysis of the extent to which such costs to state, local, and tribal governments may be paid with Federal financial assistance; (iii) if feasible, estimates of the future compliance costs and of any disproportionate budgetary effects the mandate has on particular regions, communities, non-Federal units of government, or sectors of the economy; (iv) if feasible, estimates of the effect on the national economy; and (v) a description of the Department's prior consultation with elected representatives of state, local, and tribal governments and a summary and evaluation of the comments and concerns presented.

The Department has determined that the action proposed today does not include a Federal mandate that may result in estimated costs of $100 million or more to state, local or to tribal governments in the aggregate or to the private sector. Therefore, the requirements of Sections 203 and 204 of the Unfunded Mandates Act do not apply to this action.

J. Review Under the Plain Language Directives

The President's Memorandum on ''Plain Language in Government Writing,'' 63 FR 31885 (June 10, 1998) directs each Federal agency to write all published rulemaking documents in plain language. The Memorandum includes general guidance on what constitutes ''plain language.'' Plain language requirements will vary from one document to another, depending on the intended audience, but all plain language documents should be logically organized and clearly written.

DOE invites public comments on how to make this proposed rule easier to understand. For example:

- Are the requirements in the rule clearly stated?
- Would a different organization better suit your needs?
- Have we organized the material to suit your needs?
- Does the rule contain jargon or unnecessary technical language?
- Can we improve the rule's format?

K. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. No. 105–277) requires federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. Today's proposal would not have any impact on the autonomy or the integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

IV. Public Comment

A. Written Comment Procedures

The Department invites interested persons to participate in the proposed rulemaking by submitting data, comments, or information with respect to the issues set forth in today's rule to Mr. Cyrus Nasseri, at the address indicated at the beginning of the notice. The Department will consider all submittals received by the date specified at the beginning of this notice in developing the final rule.

Under the provisions of Title 10 CFR 1004.11, any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document and ten (10) copies, if possible, from which the information believed to be confidential has been deleted. The Department of Energy will make its own determination with regard to the confidential status of the information and treat it according to its determination.

Factors of interest to the Department when evaluating requests to treat as confidential information that has been submitted include: (1) A description of the items; (2) an indication as to whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

B. Public Hearing

1. Procedures for Submitting Requests To Speak

The beginning of this notice of proposed rulemaking indicates the time and place of the public hearing. The Department invites any person who has an interest in today's notice of proposed rulemaking, or who is a representative of a group or class of persons that has an interest in these proposed rules, to request an opportunity to make an oral presentation. If you would like to attend the public hearing, please notify Ms. Brenda Edwards-Jones at (202) 586–2945. You may also hand deliver requests to speak to the address indicated at the beginning of the notice between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

The person making the request should briefly describe the interest concerned and state why he or she, either individually or as a representative of a group or class of persons that has such an interest, is an appropriate spokesperson, and give a telephone number for contact.

The Department requests each person selected to be heard to submit an advance copy of his or her statement prior to the hearing as indicated at the beginning of this notice. The Department, at its discretion, may permit any person wishing to testify who cannot meet this requirement, to testify if that person has made alternative arrangements with the Office of Codes and Standards in advance. The letter making a request to give an oral presentation must ask for such alternative arrangements.

2. Conduct of Hearing

The Department will designate a Department official to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing, but the Department will conduct it in accordance with 5 U.S.C. 553 and Section 336 of the Act. The Department of Energy reserves the right to select the persons to be heard at the hearing, to schedule the respective presentations, and to establish the procedures governing the conduct of the hearing.

The Department will permit each participant to make a prepared general statement, limited to five (5) minutes, prior to the discussion of specific topics. The general statement should not address these specific topics, but may cover any other issues pertinent to this rulemaking. The Department will permit other participants to briefly comment on any general statements. The Department will then divide the hearing into segments, with each segment consisting of one or more topics covered by this notice, as follows:

Test Procedures for Commercial Furnaces

- ASHRAE Referenced Test Standards.
- Definition of Thermal Efficiency.
- Test Procedures for the Measurement of Energy Efficiency.
- Other Test Standard Topics.

Certification and Enforcement Procedures for Commercial Heating, Air Conditioning and Water Heating Equipment

- Certification.
- Alternative Methods for Determining Efficiency.
- Voluntary Independent Certification Programs.
- Non-Participating Manufacturers.
- Other Certification and Enforcement Topics.

The Department will introduce each topic with a brief summary of the relevant provisions of the proposed rule, and the significant issues involved. The Department will then permit participants in the hearing to make a prepared statement limited to five (5) minutes on that topic. At the end of all prepared statements on a topic, the Department will permit each participant to briefly clarify his or her statement and comment on statements made by others. The Department is particularly interested in having participants address in their statements the specific issues set forth below in Section IV–C, ''Issues on which Comments are Requested,'' and participants should be prepared to answer questions by the Department and other participants at the public hearing concerning these issues. Representatives of the Department may also ask questions of participants concerning other matters relevant to the hearing. The total cumulative amount of time allowed for each participant to make prepared statements must be 20 minutes.

The official conducting the hearing will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules, or modification of the above procedures, needed for the proper conduct of the hearing.

The Department will arrange for a transcript of the hearing, and will retain the entire record of this rulemaking, including the transcript, and will make it available for inspection in the Department's Freedom of Information Reading Room. Any person may purchase a copy of the transcript from the transcribing reporter.

C. Issues on Which Comments Are Requested

The Department of Energy is interested in receiving comments and/or data concerning the feasibility, workability and appropriateness of the test procedures and certification and enforcement program proposed in today's rulemaking. Also, the Department welcomes discussion on improvements or alternatives to the proposed approaches. In particular, the Department requests comments on whether it should require manufacturers not participating in a VICP to have their equipment tested by, or under the supervision of, independent laboratories or personnel. And if such a requirement is retained in the final rule, should the Department impose specific competency criteria or qualification requirements to ensure accurate and reliable testing? Such measures might include laboratory accreditation, professional engineering registration or other similar demonstration of testing competence.

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Energy conservation, Incorporation by reference.

Issued in Washington, DC, on November 10, 1999.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, Title 10, Part 431 of the Code of Federal Regulations (CFR) is proposed to be amended as set forth below:

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

1. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6311–6316.

2. Subparts H and I are added to read as follows:

Subpart H—Definitions for Commercial HVAC & WH Products

Sec.
431.141 Definitions.

Subpart I—Commercial Warm Air Furnaces

431.151 Purpose and scope.

Test Procedures

431.161 Materials incorporated by reference.
Sec. 431.162 Uniform test method for the measurement of energy efficiency of commercial warm air furnaces.

Energy Conservation Standards

431.171 Energy conservation standards and their effective dates.

Subpart H—Definitions for Commercial HVAC & WH Products

§ 431.141 Definitions.

For purposes of subparts I through P, words are defined as provided for in section 340 of the Act and as follows—

Act or EPCA means the Energy Policy and Conservation Act, 42 U.S.C. 6291–6317.

Alternate efficiency determination method or AEDM means a method of calculating the efficiency of a commercial HVAC & WH product, in terms of the descriptor used in or under section 342 (a) of the Act to state the energy conservation standard for that product.

Basic model means all units of a commercial HVAC & WH product manufactured by one manufacturer which have the same primary energy source and which do not have any differing electrical, physical, or functional characteristics that affect energy consumption.

Batch means a collection of production units of a basic model from which a test sample is selected.

Batch size means the number of units in a batch.

Btu means British thermal unit, which is the quantity of heat required to raise the temperature of one pound of water one degree Fahrenheit.

Commercial HVAC & WH product means any article of a type which meets the statutory definition of ''covered equipment'' under section 340(1)(B)—(F) of the Act, and to which an energy conservation standard is applicable under section 342(a) of the Act.

Commercial warm air furnace means a warm air furnace that is a commercial HVAC & WH product.

Covered equipment means industrial equipment of a type specified in section 340 of the Act.

DOE or the Department means the Department of Energy.

Flue loss means the sum of the sensible heat and latent heat above room temperature of the flue gases leaving the appliance.

Independent laboratory means a laboratory or test facility not controlled by, affiliated with, having financial ties with, or under common control with the manufacturer or distributor of the covered equipment being evaluated.

Independent testing personnel means an individual, or an employee of an organization, not controlled by, affiliated with, having financial ties with, or under common control with the manufacturer or distributor of the covered equipment being evaluated.

Manufacturer's model number means the identifier used by a manufacturer to uniquely identify the group of identical or essentially identical commercial equipment to which a particular unit belongs. The manufacturer's model number typically appears on equipment nameplates, in equipment catalogs and in other product advertising literature.

Natural gas means natural gas as defined by the Federal Power Commission.

Private labeler means an owner of a brand or trade mark on the label of a commercial HVAC & WH product which bears a private label. A commercial HVAC & WH product bears a private label if:

(1) Such product (or its container) is labeled with the brand or trademark of a person other than a manufacturer of such product,

(2) The person with whose brand or trademark such product (or container) is labeled has authorized or caused such product to be so labeled, and

(3) The brand or trademark of a manufacturer of such product does not appear on such label.

Secretary means the Secretary of the Department of Energy.

State means a State, the District of Columbia, Puerto Rico, or any territory or possession of the United States.

State regulation means a law or regulation of a State or political subdivision thereof.

Thermal efficiency means the efficiency descriptor for warm air furnaces and equals 100 percent minus percent flue loss determined using test procedures prescribed under § 431.162.

Warm air furnace means a self-contained oil-fired or gas-fired furnace designed to supply heated air through ducts to spaces that require it and includes combination warm air furnace/electric air conditioning units but does not include unit heaters and duct furnaces.

Subpart I—Commercial Warm Air Furnaces

§ 431.151 Purpose and scope.

This subpart contains energy conservation requirements for certain commercial warm air furnaces, pursuant to Part C of Title III of the Energy Policy and Conservation Act, as amended, 42 U.S.C 6311–6316.

Test Procedures

§ 431.161 Materials incorporated by reference.

(a) The Department incorporates by reference the following test procedures which are not otherwise set forth in this part 431. The Director of the Federal Register has approved the material listed in paragraph (b) of this section for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Any subsequent amendment to this material by the standard-setting organization will not affect the DOE test procedures unless and until DOE amends its test procedures. The Department incorporates the material as it exists on the date of the approval and a notice of any change in the material will be published in the **Federal Register**.

(b) List of test procedures incorporated by reference.

(1) American National Standards Institute (ANSI) Standard Z21.47–1993, ''Gas-Fired Central Furnaces.''

(2) Underwriters Laboratories (UL) Standard 727–1994, ''Standard for Oil-Fired Central Furnaces.''

(3) Sections 8.2.2, 11.2, and 11.2.1, and accompanying Forms 715 and 721, of the Hydronics Institute (HI) Standard ''Testing and Rating Standard for Heating Boilers,'' 6th Edition, 1989.

(4) Sections 7.2.2.4, 7.8, 9.2, and 11.3.7 of the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE) Standard 103–1993, '' Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers.''

(c) *Availability of references.* (1) *Inspection of test procedures.* The test procedures incorporated by reference are available for inspection at:

(i) Office of the Federal Register 800 North Capitol Street, NW, Suite 700, Washington, DC 20002.

(ii) U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Hearings and Dockets, ''Test Procedures and Certification Requirements for Commercial Warm Air Furnaces,'' Docket No. EE–RM/TP–99–450, 1000 Independence Avenue, SW, Washington, DC 20585.

(2) Obtaining copies of Standards. Anyone can obtain a copy of standards incorporated by reference from the following sources:

(i) Request copies of the ASHRAE Standards from the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc., 1971 Tullie Circle, NE, Atlanta, GA 30329, or http://www.ashrae.org/book/bookshop.htm.

(ii) Request copies of the ANSI Standards from Global Engineering Documents, 15 Inverness Way East, Englewood, CO 80112, or http://global.ihs.com/, or http://webstore.ansi.org/ansidocstore/.

(iii) Request copies of the UL Standards from Global Engineering Documents, 15 Inverness Way East, Englewood, CO 80112, or http://global.ihs.com/.

(iv) Request copies of the HI Standards from the Hydronics Institute Inc., 35 Russo Place, Berkeley Heights, N.J. 07922.

§ 431.162 Uniform test method for the measurement of energy efficiency of commercial warm air furnaces.

(a) This section covers the test procedures you must follow if, pursuant to EPCA, you are measuring the steady state thermal efficiency of a gas-fired commercial warm air furnace or any oil-fired commercial warm air furnace, with capacity of 225,000 Btu/h or more. Where this section prescribes use of ANSI standard Z21.47–1993 or UL standard 727–1994, perform for purposes of this section only the procedures pertinent to the measurement of steady-state efficiency.

(b) *Test setup.* (1) *Test setup for Gas-Fired Commercial Warm Air Furnaces.* The test setup, including flue requirement, instrumentation, test conditions, and measurements for determining the thermal efficiency of gas-fired warm air furnaces with rated input of 225,000 Btu/h or more, is as specified in Sections 1.1 (Scope), 2.1 (General), 2.2 (Basic Test Arrangements), 2.3 (Test Ducts and Plenums), 2.4 (Test Gases), 2.5 (Test Pressures and Burner Adjustments), 2.6 (Static Pressure and Air Flow Adjustments), 2.37 (Thermal Efficiency), and 4.2.1 (Basic Test Arrangements for Direct Vent Control Furnaces) of the American National Standards Institute (ANSI) Standard for Gas-Fired Central Furnaces, ANSI Standard Z21.47–1993. The thermal efficiency test must be conducted only at the normal inlet test pressure, as specified in Section 2.5.1 of ANSI Z21.47–1993, and at the maximum hourly Btu input rating specified by the manufacturer for the product being tested.

(2) *Test setup for Oil-Fired Commercial Warm Air Furnaces.* The test setup, including flue requirement, instrumentation, test condition, and measurement for measuring the thermal efficiency of oil-fired warm air furnaces with rated input of 225,000 Btu/h or more, is as specified in sections 1 (Scope), 2 (Units of Measurement), 3 (Glossary), 37 (General), 38 and 39 (Test Installation), 40 (Instrumentation, except 40.4 and 40.6.2 through 40.6.7 which are not required for the thermal efficiency test), 41 (Initial Test Conditions), 42 (Combustion Test—Burner and Furnace), 43.2 (Operation Tests), 44 (Limit Control Cutout Test), 45 (Continuity of Operation Test), and 46 (Air Flow, Downflow or Horizontal Furnace Test), of the Underwriters Laboratories Standard for Oil-Fired Central Furnaces, UL Standard 727–1994. A fuel oil analysis for heating value, hydrogen content, carbon content, pounds per gallon, and API gravity must be conducted as specified

in section 8.2.2 of the 1989 Hydronics Institute Testing and Rating Standard for Heating Boilers. The steady-state combustion conditions, specified in section 42.1 of UL 727–1994, are attained as evidenced by variations in the measured flue gas temperature of not more than 5 °F for three consecutive readings taken 15 minutes apart.

(c) *Additional test measurements.* (1) *Measurement of Flue CO_2 (Carbon Dioxide) for Oil-Fired Furnaces.* In addition to the flue temperature measurement as specified in section 40.6.8 of UL Standard 727, you must locate one or two sampling tubes within six inches downstream from the flue temperature probe (as indicated on Figure 40.3 of UL Standard 727). If you use an open end tube, it must project into the flue one-third of the chimney connector diameter. If you use other methods of sampling CO_2, you must place the sampling tube so as to obtain an average sample. There must be no air leak between the temperature probe and the sampling tube location. You must collect the flue gas sample at the same time the flue gas temperature is recorded. The CO_2 concentration of the flue gas must be as specified by the manufacturer for the product being tested, with a tolerance of ±0.1%. You must determine the flue CO_2 with an instrument providing a reading with an error no greater than ±0.1%.

(2) *Procedure for the Measurement of Condensate for a Gas-Fired Condensing Furnace.* The test procedure for the measurement of the condensate from the flue gas under steady state operation must be conducted as specified in sections 7.2.2.4, 7.8 and 9.2 of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc. (ASHRAE) Standard 103–1993 under the maximum rated input conditions. You must conduct this condensate measurement for an additional 30 minutes of steady state operation after the completion of the steady state thermal efficiency test specified in paragraph (b) of this section.

(d) *Calculations of Thermal Efficiency.* (1) *Gas-Fired Commercial Warm Air Furnaces.* You must use the calculation procedure as specified in section 2.37, Thermal Efficiency, of ANSI Standard Z21.47–1993.

(2) *Oil-Fired Commercial Warm Air Furnaces.* You must calculate the percent flue loss and the steady state efficiency by following the procedure specified in section 11.2 (Combustion Efficiency Test), and Forms 715 and 721, of the 1989 Hydronics Institute (HI) Testing and Heating Standard for Heating Boilers. The thermal efficiency must be calculated as:

Thermal Efficiency (percent) = 100 percent—flue loss (percent).

(e) *Procedure for the Calculation of the Additional Heat Gain and Heat loss, and Adjustment to the Thermal Efficiency for a Condensing Furnace.* (1) You must calculate the latent heat gain from the condensation of the water vapor in the flue gas, and calculate heat loss due to the flue condensate down the drain, as specified in sections 11.3.7.1 and 11.3.7.2 of ASHRAE Standard 103–1993, with the exception that in the equation for the heat loss due to hot condensate flowing down the drain in section 11.3.7.2, the assumed indoor temperature of 70 °F and the temperature term T_{OA} must be replaced by the measured room temperature as specified in section 2.2.8 of ANSI Z21.47–1993.

(2) *Adjustment to the Thermal Efficiency for Condensing Furnace.* You must adjust the thermal efficiency as calculated in paragraph (d)(1) of this section by adding the latent gain from the condensation of the water vapor in the flue gas and subtracting the heat loss (due to the flue condensate down the drain) to obtain the thermal efficiency of a condensing furnace.

Energy Conservation Standards

§ 431.171 Energy conservation standards and their effective dates.

Each commercial warm air furnace manufactured on or after January 1, 1994 must meet the following energy efficiency standard levels:

(a) For a gas-fired commercial warm air furnace with capacity of 225,000 Btu per hour or more, the thermal efficiency at the maximum rated capacity must be not less than 80 percent.

(b) For an oil-fired commercial warm air furnace with capacity of 225,000 Btu per hour or more, the thermal efficiency at the maximum rated capacity must be not less than 81 percent.

3. Subparts J, K, L and M are added to read as follows:

Subpart J—Commercial Air Conditioners and Heat Pumps [Reserved]

Subpart K—Commercial Packaged Boilers [Reserved]

Subpart L—Commercial Water Heaters and Unfired Hot Water Storage Tanks [Reserved]

Subpart M—Methods of Determining Efficiency of Commercial HVAC & WH Products.

Sec.

431.481 Requirements applicable to all manufacturers.
431.482 Additional requirements applicable to VICP participants.
431.483 Additional requirements applicable to non-VICP participants.
431.484 Voluntary independent certification programs (VICP).

Subpart M—Methods of Determining Efficiency of Commercial HVAC & WH Products.

§ 431.481 Requirements applicable to all manufacturers.

(a) *General.* A manufacturer of a commercial HVAC & WH product may not distribute any basic model of such product in commerce unless the manufacturer has determined the efficiency of the basic model either from testing of the basic model or from application of an alternative efficiency determination method (AEDM) to the basic model, in accordance with the requirements of this section. (For purposes of this subpart, the ''efficiency'' of a commercial HVAC & WH product means the energy efficiency or energy use of that product, expressed in terms of the descriptor that is used in or under Section 342(a) of the Act to state the energy conservation standard for that product.)

(b) *Testing.* If you test a basic model pursuant to this section to determine its efficiency or to validate an AEDM, you must:

(1) Select at random the unit(s) to be tested, which must be representative of the basic model,

(2) Perform the testing in accordance with the applicable DOE test procedure,

(3) Meet industry standards for the accuracy of testing and of rating results for the equipment being tested, and

(4) Meet the requirements of either section 431.482(b) or section 431.483(a), whichever is applicable.

(c) *Alternative efficiency determination methods.*

(1) *Criteria an AEDM must satisfy.* You may not apply an AEDM to a basic model to determine its efficiency pursuant to this subpart unless,

(i) The AEDM is derived from a mathematical model that accurately represents the energy consumption characteristics of the basic model, and

(ii) The AEDM is based on engineering or statistical analysis, computer simulation or modeling , or other analytic evaluation of performance data.

(2) *Subsequent verification of an AEDM.* If you have used an AEDM pursuant to this subpart,

(i) You must have available for inspection by the Department records showing:

(A) The method or methods used;

(B) The mathematical model, the engineering or statistical analysis, computer simulation or modeling, and other analytic evaluation of performance data on which the AEDM is based, and

(C) Complete test data, product information, and related information that you generated or acquired under paragraph (c)(1) of this section and §§ 431.482(c) or 431.483(b)(1), as applicable, and

(D) The calculations used to determine the average efficiency and energy consumption of each basic model to which an AEDM was applied.

(ii) If requested by the Department, you must:

(A) Conduct simulations to predict the performance of particular basic models of the commercial HVAC & WH product, or

(B) Provide analyses of previous simulations conducted by you, or

(C) Conduct sample testing of basic models selected by the Department, or

(D) Conduct a combination of these.

§ 431.482 Additional requirements applicable to VICP participants.

(a) *Description of VICP participant.* For purposes of this subpart, a manufacturer that participates in a Voluntary Independent Certification Program (VICP) approved by the Department for a commercial HVAC & WH product, as described in § 431.484, and that complies with all requirements imposed by that program, is a ''VICP participant'' with respect to that product.

(b) *Testing.* A VICP participant that tests a basic model pursuant to this subpart must use statistically valid and accurate methods to arrive at the efficiency rating of such basic model.

(c) *Alternative efficiency determination methods.* Before using an AEDM to determine the efficiency of a basic model pursuant to this subpart, a VICP participant must apply the AEDM to one or more basic models that have been tested in accordance with §§ 431.481(b) and 431.482(b) of this subpart, and the predicted efficiency calculated for each such basic model from application of the AEDM must be within five percent of the efficiency determined from testing that basic model. In addition, the predicted efficiency(ies) calculated for the tested basic model(s) must on average be within one percent of the efficiency(ies) determined from testing such basic model(s).

§ 431.483 Additional requirements applicable to non-VICP participants.

If you are a manufacturer that is not a VICP participant with respect to a particular commercial HVAC & WH product, you must meet the following requirements as to that product.

(a) *Testing.* You must perform any testing of a basic model pursuant to this subpart under the supervision of independent testing personnel, or have such testing performed at an independent laboratory. In addition, you must test a sufficient number of units of the basic model, and the efficiency rating of the basic model must be determined, such that,

(1) Any represented value of energy efficiency is no greater than the lower of the mean of the sample, or the lower 95 percent confidence limit of the true mean divided by 0.95, and,

(2) Any represented value of energy usage is no less than the greater of the mean of the sample, or the upper 95 percent confidence limit of the true mean divided by 1.05.

(b) *Alternative efficiency determination methods.* Before using an AEDM to determine the efficiency of a basic model pursuant to this subpart, you must first,

(1) Apply the AEDM to three or more basic models that have been tested in accordance with §§ 431.481(b) and 431.483(a) of this subpart. The predicted efficiency calculated for each such basic model from application of the AEDM must be within five percent of the efficiency determined from testing that basic model, and the predicted efficiencies calculated for the tested basic models must on average be within one percent of the efficiencies determined from testing such basic models; and

(2) Obtain from the Department approval of the AEDM. The Department will provide such approval after receiving from you documentation which establishes that the AEDM satisfies the requirements of §§ 431.481(c)(1) and 431.483(b)(1) of this subpart.

§ 431.484 Voluntary independent certification programs (VICP).

(a) The Department will approve a voluntary independent certification program (VICP) for a commercial HVAC & WH product if the VICP meets all of the following criteria:

(1) The program publishes its operating procedures in written form, and permits participation by all manufacturers of products covered by the program so long as they comply with the VICP's requirements concerning operation of the program.

(2) The program requires each participant to report to the program the efficiency of each basic model that the participant manufactures and that is covered by the program. The participant must determine such efficiency based on measurement of the basic model's performance.

(3) The program publishes the efficiency ratings received from each participant, or otherwise makes the ratings readily available to the general public and to the Department.

(4) The program conducts periodic verification testing on listed equipment, by testing the efficiency of each basic model at least once every five years and comparing its rated efficiency to the test results.

(5) An independent laboratory conducts the tests, or independent laboratory personnel supervise the tests.

(6) For verification testing, the testing personnel select units randomly from the manufacturer's stock.

(7) The program uses efficiency testing in accordance with applicable DOE test procedures.

(8) The program's verification testing meets industry standards for the accuracy of testing and of rating results for the equipment being tested, and the program satisfactorily describes how it meets these standards.

(9) The program has an appropriate standard for determining whether the efficiency rating a manufacturer claims for a product is valid.

(10) The program requires that, if a basic model fails verification testing conducted by the VICP, the manufacturer of the basic model must remove it from production and sale if the verification testing results show it is not in compliance with EPCA efficiency standards, or correctly re-rate it if it complies with such standards. The program must also provide that a participating manufacturer will be expelled from the VICP if it does not comply with such requirements, and that the VICP will report to the Department verification test results that find the performance of a basic model not to meet EPCA efficiency standards.

(A basic model ''fails'' verification testing when the VICP has compared the basic model's efficiency rating resulting from completion of that testing with the efficiency rating claimed by the manufacturer, and has determined that the rating claimed by the manufacturer is not valid.)

(11) The program provides for penalties or other incentives to encourage manufacturers to report accurate and reliable efficiency ratings.

(12) The program provides to the manufacturer copies of all records of completed verification testing performed on the manufacturer's equipment covered by the program.

(13) The VICP provides to the Department annually data on the results of its verification testing during the previous 12 months, including the following for each basic model on which the VICP has performed verification testing:

(i) The measured efficiency from the verification testing,

(ii) The manufacturer's efficiency rating, and

(iii) Either the applicable energy conservation standard or a description of the model sufficient to enable the Department to determine such standard.

(b) An organization seeking the Department's approval of its voluntary independent certification program must submit to the Department written information which demonstrates that the program meets the requirements of paragraph (a) of this section. Approval will remain in force for five years, unless material changes occur in the program. In the event of changes, the VICP must promptly notify the Department, which may then rescind or continue the approval. The Department may at any time rescind its approval of a VICP upon determining that the program does not meet the requirements of paragraph (a) of this section.

4. Subparts N, O, and P are added to read as follows:

Subpart N—Labeling (Reserved)

Subpart O—Certification and Enforcement Provisions Applicable to Commercial HVAC & WH Products

Sec.

431.501 Purpose and scope.
431.502 Prohibited acts.
431.503 Compliance certification; general requirements.
431.504 Compliance certification; compliance statement.
431.505 Compliance certification; certification report.
431.506 Enforcement.
431.507 Enforcement; compliance determination procedure.
431.508 Cessation of distribution of a basic model.
431.509 Remedies.
431.510 Hearings and appeals.

Subpart P—General Provisions for Commercial HVAC & WH Products.

431.601 Petitions for waiver, and applications for interim waiver, of test procedure.
431.602 Preemption of state regulations for commercial HVAC & WH products.
431.603 Maintenance of records.
431.604 Imported equipment.
431.605 Exported equipment.
431.606 Subpoena.
431.607 Confidentiality.

Subpart O—Certification and Enforcement Provisions Applicable to Commercial HVAC & WH Products

§ 431.501 Purpose and scope.

This subpart sets out how manufacturers and private labelers can certify that their commercial HVAC & WH products comply with the applicable energy efficiency standards, and how the Department will enforce the provisions of the Act and 10 CFR Part 431 applicable to such products.

§ 431.502 Prohibited acts.

(a) Each of the following is a prohibited act under sections 332 and 345 of the Act:

(1) Failure to permit access to, or copying of records required to be supplied under the Act and this part or failure to make reports or provide other information required to be supplied under the Act and this part;

(2) Failure of a manufacturer to supply at his expense a reasonable number of units of a covered commercial equipment to a test laboratory designated by the Secretary;

(3) Failure of a manufacturer to permit a representative designated by the Secretary to observe any testing required by the Act and this part, and to inspect the results of such testing; and

(4) Distribution in commerce by a manufacturer or private labeler of any new covered equipment which is not in compliance with an applicable energy efficiency standard prescribed under the Act and this part.

(b) In accordance with sections 333 and 345 of the Act, any person who knowingly violates any provision of paragraph (a) of this section may be subject to assessment of a civil penalty of no more than $110 for each violation. Each violation of paragraph (a)(4) of this section will constitute a separate violation with respect to each unit of covered equipment, and each day of noncompliance with paragraphs (a)(1) through (3) of this section will constitute a separate violation.

(c) For purposes of this section,

(1) The term ''new covered equipment'' means covered equipment the title of which has not passed to a purchaser who buys such equipment for purposes other than

(i) Reselling such equipment, or

(ii) Leasing such equipment for a period in excess of one year; and

(2) The term ''knowingly'' means

(i) Having actual knowledge, or

(ii) Presumed to have knowledge deemed to be possessed by a reasonable person who acts in the circumstances, including knowledge obtainable upon the exercise of due care.

§ 431.503 Compliance certification; general requirements.

(a) *General.* Beginning twelve months after the publication of the applicable test procedures, if you are a manufacturer or private labeler, you may not distribute in commerce any basic model of a commercial HVAC & WH product subject to an energy conservation standard under section 342(a) of the Act unless you have certified that the basic model complies with the requirements of the applicable standards, as follows:

(1) Submit to the Department a compliance statement, as described in § 431.504, and

(2) Submit to the Department, or have an authorized third party (such as a trade association or VICP) submit to the Department, a certification report as described in § 431.505.

(b) *New models.* (1) Prior to or concurrent with distributing in commerce any new model of a commercial HVAC & WH product, you must submit all information required under paragraph (a)(2) of this section for that model .

(2) Any change to an existing basic model which affects energy consumption will constitute the addition of a new basic model. If such a change neither alters compliance with the applicable energy conservation standard for the new basic model, nor will be a basis for giving the new basic model an efficiency rating that differs from the rating of the existing basic model, then you need not measure the efficiency of the new basic model. However, you must submit all information required by § 431.503(a)(2) for the new basic model.

(c) *Discontinued models.* (1) A model is discontinued when its production has ceased and it is no longer being distributed.

(2) You (or an authorized representative) must report such models to the Department at the address and in the manner described in paragraph (e) of this section. In such a report, for each

model, you must list: equipment type, the manufacturer's name, the private labeler name(s), if applicable, and the manufacturer's model number(s).

(d) *Amendment of information.* If information in a compliance statement or certification report previously submitted to the Department under this section is found to be incorrect, you (or an authorized representative) must submit the corrected information to the Department at the address and in the manner described in paragraph (e) of this section.

(e) *Correspondence with the Department.* Send any correspondence by certified mail to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Office of Codes and Standards, 1000 Independence Avenue, SW, Washington, DC 20585–0121.

(f) Notices designating a change of third party representative must be sent to the Department at the address and in the manner described in paragraph (e) of this section.

§ 431.504 Compliance certification; compliance statement.

(a) You must send your compliance statement to the Department in the manner described in § 431.503 (e) signed by a corporate officer, and in the format set forth in the paragraph (b) of this section.

(b) *Statement contents.* Your compliance statement must certify that:

(1) Each basic model you manufacture of the commercial HVAC & WH product covered by the compliance statement complies with the applicable energy conservation standards;

(2) All representations as to efficiency in your compliance certification and certification report(s) are based on testing and/or use of an AEDM in accordance with 10 CFR part 431;

(3) All information reported in your compliance statement and certification report(s) is true, accurate and complete; and

(4) You are aware of the penalties associated with violations of the Act and the regulations thereunder, and of 18 U.S.C. 1001 which prohibits knowingly making false statements to the Federal Government.

(c) *Statement format.* You must use the following format for your compliance statement:

Statement of Compliance With Energy Conservation Standards for Commercial HVAC & WH Products

Product: _____

Manufacturer's Name and Address:

_____

_____

_____

[Company name] submits this compliance statement under 10 CFR Part 431 (Energy Conservation Program for Commercial Equipment) and Part C of the Energy Policy and Conservation Act (Pub. L. 94–163), and amendments thereto. I am signing this on behalf of and as a responsible official of the above named company. All basic models of [the commercial HVAC & WH product covered by this statement] that the company manufactures comply with the applicable energy conservation standards. We have complied with the applicable testing requirements (prescribed in 10 CFR Part 431) in making this determination, and in determining the energy efficiency or energy use that is set forth in the certification report for each of these basic models. All information in that report and in this statement is true, accurate, and complete. The company is aware of the penalties associated with violations of the Act and the regulations thereunder, and is also aware of the provisions contained in 18 U.S.C. 1001, which prohibits knowingly making false statement to the Federal Government.

Signature of Company Official:

_____

Name: _____

Title: _____

Firm or Organization: _____

Date: _____

Name of Person to Contact for Further Information:

Name: _____

Address: _____

Telephone Number: _____

Facsimile Number: _____

Third Party Representative:

If a third party organization, under the provisions of 10 CFR Part 431, prepared any part of this Compliance Certification, or is authorized to submit any certification report(s) for the company, provide the following information for the company official who authorized third party representations:

Name: _____

Title: _____

Address: _____

Telephone Number: _____

Facsimile Number: _____

The third party organization authorized to act as representative:

Third Party Organization:

_____

Name of Responsible Person at that Organization:

_____

Address: _____

Telephone Number: _____

Facsimile Number: _____

§ 431.505 Compliance certification; certification report.

(a) You, or an authorized third party acting on your behalf, must send your certification report(s) to the Department in the manner specified in § 431.503(e), signed by an official or your company or the third party representative. The Department will also accept a computer diskette which contains the certification report.

(b) *Report contents.* The certification report must include the equipment type, manufacturer's name, private labeler name(s) (if applicable), the manufacturer's model number(s), and

(1) For gas-fired and oil-fired commercial warm air furnaces (with a capacity of 225,000 Btu per hour or more), the minimum thermal efficiency at the maximum rated capacity.

(2) For gas-fired and oil-fired commercial packaged boilers, the minimum combustion efficiency at the maximum rated capacity;

(3) For air-cooled three-phase electric central air conditioners and central air conditioning heat pumps less than 65,000 Btu per hour (cooling capacity), split systems or single package, the seasonal energy efficiency ratio and the heating seasonal performance factor;

(4) For air-cooled central air conditioners and central air conditioning heat pumps at or above 65,000 Btu per hour (cooling capacity) and less than 135,000 Btu per hour (cooling capacity), the energy efficiency ratio (at a temperature rating of 95°F dry bulb temperature) and the coefficient of performance in the heating mode (at a temperature rating of 47°F dry bulb temperature);

(5) For water-cooled, evaporatively-cooled and water-source central air conditioners and central air conditioning heat pumps of less than 135,000 Btu per hour (cooling capacity), the energy efficiency ratio (at a standard rating of 95°F dry bulb temperature, for evaporatively cooled equipment, and 85°F entering water temperature, for water-source and water-cooled equipment);

(6) For water-source heat pumps less than 135,000 Btu per hour (cooling capacity), the coefficient of performance in the heating mode (at a standard rating of 70°F entering water temperature);

(7) For air-cooled central air conditioners and central air conditioning heat pumps at or above 135,000 Btu per hour (cooling capacity) and less than 240,000 Btu per hour (cooling capacity), the energy efficiency ratio (at a standard rating of 95°F dry bulb temperature) and the coefficient of performance in the heating mode (at a high temperature rating of 47°F dry bulb temperature);

(8) For water- and evaporatively-cooled central air conditioners and central air conditioning heat pumps at or above 135,000 Btu per hour (cooling capacity) and less than 240,000 Btu per hour (cooling capacity), the energy efficiency ratio (according to ARI Standard 340/360–93);

(9) For packaged terminal air conditioners, the energy efficiency ratio

(EER) in the cooling mode (at a temperature rating of 95°F dry bulb temperature);

(10) For packaged terminal heat pumps, the energy efficiency ratio (EER) in the cooling mode (at a temperature rating of 95°F dry bulb temperature), and the coefficient of performance (COP) in the heating mode (at a standard rating of 47°F dry bulb temperature);

(11) For storage water heaters (except those having more than 140 gallon storage capacity, not having a standing pilot light, and having the tank surface area thermally insulated to R–12.5) manufactured on or after January 1, 1994, the maximum standby loss, in percent per hour;

(12) For instantaneous water heaters (except those having more than 140 gallon storage capacity, not having a standing pilot light, and having the tank surface area thermally insulated to R–12.5), the minimum thermal efficiency, and for storage volumes of 10 gallons or more, the maximum standby loss, in percent per hour; and

(13) For unfired hot water storage tanks (except those having more than 140 gallon storage capacity, and having the tank surface area thermally insulated to R–12.5), the maximum heat loss in Btus per hour square foot of nominal tank surface area.

(c) One possible format for a certification report is as follows:

Certification report for commercial equipment: (Insert the Name of Equipment)

Dated: _____

Signature of Company Official or Third Party Representative:

_____

Equipment Type: _____

Manufacturer: _____

Private Labeler (if applicable):

_____

For New or Amended Basic Models:

(Provide specific equipment information including, for each basic model, the manufacturer's model number(s) and the information required in § 431.505 (b)).

For Discontinued Basic Models:

(Provide manufacturer's model number(s)).

§ 431.506 Enforcement.

(a) *Test notice.* Upon receiving information in writing concerning the energy performance of a particular commercial HVAC & WH product sold by a manufacturer or private labeler which indicates that the product may not be in compliance with the applicable energy performance standard, the Secretary may conduct a review of test records. The Secretary may then conduct enforcement testing of that equipment by means of a test notice addressed to the manufacturer or private labeler in accordance with the following requirements:

(1) The test notice procedure will only be followed after the Secretary or his/her designated representative has examined the underlying test data (or, where appropriate, data as to use of an alternative efficiency determination method) provided by the manufacturer, and after the manufacturer has been offered the opportunity to meet with the Department to verify compliance with the applicable efficiency standard. In addition, where compliance of a basic model was certified based on an AEDM, the Department has the discretion to pursue the provisions of § 431.481(c)(2)(ii) prior to invoking the test notice procedure. A representative designated by the Secretary must be permitted to observe any reverification procedures undertaken according to this subpart and to inspect the results of such reverification.

(2) The test notice will be signed by the Secretary or his/her designee and will be mailed or delivered by the Department to the plant manager or other responsible official designated by the manufacturer.

(3) The test notice will specify the model or basic model to be selected for testing, the number of units to be tested, the method for selecting these units, the date and time at which testing is to begin, the date by which testing is scheduled to be completed and the facility at which testing will be conducted. The test notice may also provide for situations in which the selected basic model is unavailable for testing, and it may include alternative basic models.

(4) The Secretary may require in the test notice that the manufacturer ship at his expense a reasonable number of units of a basic model specified in the test notice to a testing laboratory designated by the Secretary.

(5) Within five working days of the time the units are selected, the manufacturer must ship the specified units of a basic model to the designated testing laboratory.

(b) *Testing Laboratory.* Whenever the Department conducts enforcement testing at a designated laboratory in accordance with a test notice under this section, the resulting test data will constitute official test data for that basic model. The Department will use such test data to make a determination of compliance or noncompliance.

(c) *Sampling.* The Secretary will base the determination of whether a manufacturer's basic model complies with the applicable energy performance standard on the testing conducted in accordance with the procedures set forth in this section and § 431.507, and the applicable test procedures specified in this part. Initially, the Department will test two units, except as follows:

(1) If only one unit of a basic model is available for testing, the Department will test that unit, and will base the compliance determination on the results for that unit in a manner otherwise in accordance with this section. Available units are those which are available for commercial distribution within the United States.

(2) If a basic model is very large or has unusual testing requirements, the Department may decide to base the determination of compliance on the testing of one unit, if the manufacturer so requests and provides sufficient justification for the request.

(d) *Test unit selection.* A DOE inspector will select a batch from all available units, and a test sample (*i.e.,* the units to be tested) from the batch, in accordance with the provisions of this paragraph and the conditions specified in the test notice.

(1) DOE may select the batch by utilizing criteria specified in the test notice, *e.g.,* date of manufacture, component-supplier, location of manufacturing facility, or other criteria which may differentiate one unit from another within a basic model.

(2) DOE will randomly select individual units to be tested, comprising the test sample, from the batch. DOE will achieve random selection by sequentially numbering all of the units in a batch and then using a table of random numbers to select the units to be tested. The manufacturer must keep on hand all units in the batch until such time as the inspector determines the basic model to be in compliance or noncompliance.

(e) *Test unit preparation.* (1) Prior to and during testing, no one may prepare, modify, or adjust in any manner a test unit selected in accordance with paragraph (d) of this section unless the applicable DOE test procedure allows such preparation, modification, or adjustment. DOE will conduct one test for each test unit in accordance with the applicable test procedures.

(2) No one may perform any quality control, testing or assembly procedures on a test unit, or any parts and subassemblies thereof, that is not performed during the production and assembly of all other units included in the basic model.

(3) A test unit is defective if such unit is inoperative or is found to be in noncompliance due to failure of the unit to operate according to the manufacturer's design and operating instructions. Defective units, including those damaged due to shipping or handling, must be reported immediately

to the Department. The Department will authorize testing of an additional unit on a case-by-case basis.

(f) *Testing at manufacturer's option.* If the Department determines a basic model to be in noncompliance with the applicable energy performance standard at the conclusion of its initial enforcement sampling plan testing, the manufacturer may request that the Department conduct additional testing of up to two additional units of the basic model at the manufacturer's expense. Testing under this paragraph must be in accordance with the applicable test procedure specified in this part, the provisions of paragraphs (d) and (e) of this section, and § 431.507(d).

§ 431.507 Enforcement; compliance determination procedure.

The Department will determine compliance for commercial HVAC & WH equipment as follows:

(a) Make the computation in paragraph (b) of this section when the first sample size (n_1) is two units.

(b) Compute the mean (x_1) of the measured energy performance of the n_1 units in the first sample as follows:

$$\bar{x}_1 = \frac{1}{n_1}\left(\sum_{i=1}^{n_1} x_i\right)$$

where (x_i) is the measured energy efficiency or energy consumption of unit i.

(c) From the sample mean performance derived pursuant to paragraph (b) of this section, or from the measured performance when compliance is determined from testing one unit pursuant to § 431.506(c), determine one of the following:

(1) For an Energy Efficiency Standard, if the aforementioned sample mean or measured performance is equal to or greater than 95 percent of the applicable energy efficiency standard, the basic model is in compliance and testing is at an end.

(2) For an Energy Consumption Standard, if the aforementioned sample mean or measured performance is equal to or less than 105 percent of the applicable energy consumption standard, the basic model is in compliance and testing is at an end.

(3) Otherwise, the basic model is not in compliance.

(d) *Manufacturer-Option Testing.* If the basic model is in non-compliance pursuant to paragraph (c)(3) of this section, the manufacturer may request additional testing, as follows.

(1) The manufacturer requests the testing of an additional number of units, such that the total size of the combined sample tested does not exceed 4.

(2) Compute the mean energy performance of the new combined sample using the paragraph (b) of this section.

(3) From the mean performance of the new combined sample, determine one of the following:

(i) For an Energy Efficiency Standard, if the new combined sample mean is equal to or greater than 95 percent of the applicable energy efficiency standard, the basic model is in compliance and testing is at an end.

(ii) For an Energy Consumption Standard, if the new combined sample mean is equal to or less than 105 percent of the applicable energy consumption standard, the basic model is in compliance and testing is at an end.

(iii) Otherwise, the basic model is in not in compliance.

§ 431.508 Cessation of distribution of a basic model.

(a) If you are a manufacturer or private labeler, and DOE determines one of your models to be noncompliant, in accordance with § 431.506 and 431.507, or you determine that one of your models is noncompliant, you must:

(1) Immediately cease distribution in commerce of all units of the basic model in question;

(2) Give immediate written notification of the determination of noncompliance, to all persons to whom you have distributed units of the basic model manufactured since the date of the last determination of compliance; and

(3) If a request is made by the Secretary, provide DOE within 30 days of the request, records, reports and other documentation pertaining to the acquisition, ordering, storage, shipment, or sale of a basic model determined to be noncompliant.

(b) The manufacturer may modify the noncompliant basic model in such manner as to make it comply with the applicable performance standard. You must treat such a modified basic model as a new basic model and certify it in accordance with the provisions of this subpart; except that in addition to satisfying all requirements of this subpart, you must also maintain records that demonstrate that modifications have been made to all units of the new basic model prior to its distribution in commerce.

(c) If a manufacturer or private labeler has a basic model not properly certified in accordance with the requirements of this subpart, the Secretary may seek, among other remedies, injunctive action to prohibit distribution in commerce of units of such a basic model.

§ 431.509 Remedies.

If the Secretary determines that a basic model of covered equipment does not comply with an applicable energy conservation standard:

(a) The Secretary will notify the manufacturer, private labeler or any other person as required, of this finding and of the Secretary's intent to seek a judicial order restraining further distribution in commerce of units of such a basic model unless the manufacturer, private labeler or any other person as required, delivers to the Secretary within 15 calendar days a statement, satisfactory to the Secretary, of the steps he will take to insure that the noncompliant basic model will no longer be distributed in commerce. The Secretary will monitor the implementation of such statement.

(b) If the manufacturer, private labeler or any other person as required, fails to stop distribution of the noncompliant basic model, the Secretary may seek to restrain such violation in accordance with sections 334 and 345 of the Act.

(c) The Secretary will determine whether the facts of the case warrant the assessment of civil penalties for knowing violations in accordance with sections 333 and 345 of the Act.

§ 431.510 Hearings and appeals.

(a) Under sections 333(d) and 345 of the Act, before issuing an order assessing a civil penalty against any person, the Secretary must provide to such a person a notice of the proposed penalty. Such notice must inform the person that such person can choose (in writing within 30 days after receipt of the notice) to have the procedures of paragraph (c) of this section (in lieu of those in paragraph (b) of this section) apply with respect to such assessment.

(b)(1) Unless a person elects, within 30 calendar days after receipt of a notice under paragraph (a) of this section, to have paragraph (c) apply with respect to the civil penalty under paragraph (a), the Secretary will assess the penalty, by order, after providing an opportunity for an agency hearing under section 554 of title 5, United States Code, and making a determination of violation on the record before an administrative law judge appointed under section 3105 of such title 5. Such assessment order will include the administrative law judge's findings and the basis for such assessment.

(2) Any person against whom the Secretary assesses a penalty under this paragraph may, within 60 calendar days after the date of the order assessing such penalty, initiate action in the United States Court of Appeals for the appropriate judicial circuit for judicial

review of such order in accordance with chapter 7 of title 5, United States Code. The court will have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(c)(1) In the case of any civil penalty with respect to which the procedures of this paragraph have been elected, the Secretary will promptly assess such penalty, by order, after the date of the receipt of the notice under paragraph (a) of this section of the proposed penalty.

(2) If the person has not paid the civil penalty within 60 calendar days after the assessment has been made under paragraph (c)(1) of this section, the Secretary will institute an action in the appropriate District Court of the United States for an order affirming the assessment of the civil penalty. The court will have authority to review de novo the law and the facts involved and jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(3) Any election to have this paragraph apply can only be revoked with the consent of the Secretary.

(d) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (b) of this section, or after the appropriate District Court has entered final judgment in favor of the Secretary under paragraph (c) of this section, the Secretary will institute an action to recover the amount of such penalty in any appropriate District Court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment will not be subject to review.

(e)(1) In accordance with the provisions of sections 333(d)(5)(A) and 345 of the Act and notwithstanding the provisions of title 28, United States Code, or section 502(c) of the Department of Energy Organization Act, the General Counsel of the Department of Energy (or any attorney or attorneys within DOE designated by the Secretary) will represent the Secretary, and will supervise, conduct, and argue any civil litigation to which paragraph (c) of this section applies (including any related collection action under paragraph (d) of this section) in a court of the United States or in any other court, except the Supreme Court of the United States. However, the Secretary or the General Counsel will consult with the Attorney General concerning such litigation and the Attorney General will provide, on request, such assistance in the conduct of such litigation as may be appropriate.

(2) In accordance with the provisions of sections 333(d)(5)(B) and 345 of the Act, and subject to the provisions of section 502(c) of the Department of Energy Organization Act, the Secretary will be represented by the Attorney General, or the Solicitor General, as appropriate, in actions under this section, except to the extent provided in paragraph (e)(1) of this section.

(3) In accordance with the provisions of section 333(d)(5)(C) and 345 of the Act, section 402(d) of the Department of Energy Organization Act will not apply with respect to the function of the Secretary under this section.

Subpart P—General Provisions for Commercial HVAC & WH Products

§ 431.601 Petitions for waiver, and applications for interim waiver, of test procedure.

(a) *General criteria.* (1) Any interested person may submit a petition to waive for a particular basic model any requirements of § 431.162, and of the provisions specifying the test methods for other commercial HVAC & WH products, upon the grounds that either the basic model contains one or more design characteristics which either prevent testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data.

(2) If you have submitted a Petition for Waiver as provided in this subpart, you may also file an Application for Interim Waiver of the applicable test procedure requirements.

(b) *Submission, content, and publication.* (1) You must submit your Petition for Waiver in triplicate, to the Assistant Secretary for Energy Efficiency and Renewable Energy, United States Department of Energy. Each Petition for Waiver must:

(i) Identify the particular basic model(s) for which a waiver is requested, the design characteristic(s) constituting the grounds for the petition, and the specific requirements sought to be waived, and must discuss in detail the need for the requested waiver;

(ii) Identify manufacturers of all other basic models marketed in the United States and known to the petitioner to incorporate similar design characteristic(s);

(iii) Include any alternate test procedures known to the petitioner to evaluate the characteristics of the basic model in a manner representative of its energy consumption; and

(iv) Be signed by you or by an authorized representative. In accordance with the provisions set forth in 10 CFR 1004.11, any request for confidential treatment of any information contained in a Petition for Waiver or in supporting documentation must be accompanied by a copy of the petition, application or supporting documentation from which the information claimed to be confidential has been deleted. DOE will publish in the **Federal Register** the petition and supporting documents from which confidential information, as determined by DOE, has been deleted in accordance with 10 CFR 1004.11 and will solicit comments, data and information with respect to the determination of the petition.

(2) You must submit any Application for Interim Waiver in triplicate, with the required three copies of the Petition for Waiver, to the Assistant Secretary for Energy Efficiency and Renewable Energy, U.S. Department of Energy. Each Application for Interim Waiver must reference the Petition for Waiver by identifying the particular basic model(s) for which you seek a waiver and temporary exception. Each Application for Interim Waiver must demonstrate likely success of the Petition for Waiver and address what economic hardship and/or competitive disadvantage is likely to result absent a favorable determination on the Application for Interim Waiver. You or an authorized representative must sign the Application for Interim Waiver.

(c) *Notification to other manufacturers.* (1) After filing a Petition for Waiver with DOE, and after DOE has published the Petition for Waiver in the **Federal Register**, you must, within five working days of such publication, notify in writing all known manufacturers of domestically marketed units of the same product type (as defined in section 340(1) of the Act) and must include in the notice a statement that DOE has published in the **Federal Register** on a certain date the Petition for Waiver and supporting documents from which confidential information, if any, as determined by DOE, has been deleted in accordance with 10 CFR 1004.11. In complying with the requirements of this paragraph, you must file with DOE a statement certifying the names and addresses of each person to whom you have sent a notice of the Petition for Waiver.

(2) If you apply for Interim Waiver, whether filing jointly with or subsequent to your Petition for Waiver with DOE, you must concurrently notify in writing all known manufacturers of

domestically marketed units of the same product type (as defined in Section 340(1) of the Act), and must include in the notice a copy of the Petition for Waiver and a copy of the Application for Interim Waiver. In complying with this section, you must in the written notification include a statement that the Assistant Secretary for Energy Efficiency and Renewable Energy will receive and consider timely written comments on the Application for Interim Waiver. Upon filing an Application for Interim Waiver, you must in complying with the requirements of this paragraph certify to DOE that a copy of these documents has been sent to all known manufacturers of domestically marked units of the same product type (as listed in section 340(1) of the Act). Such certification must include the names and addresses of such persons. You must comply with the provisions of paragraph (c)(1) of this section with respect to the petition for waiver.

(d) *Comments; responses to comments.* (1) Any person submitting written comments to DOE with respect to an Application for Interim Waiver must also send a copy of the comments to the applicant.

(2) Any person submitting written comments to DOE with respect to a Petition for Waiver must also send a copy of such comments to the petitioner. In accordance with paragraph (b)(1) of this section, a petitioner may submit a rebuttal statement to the Assistant Secretary for Energy Efficiency and Renewable Energy.

(e) *Provisions specific to interim waivers.* (1) *Disposition of application.* If administratively feasible, DOE will notify the applicant in writing of the disposition of the Application for Interim Waiver within 15 business days of receipt of the application. Notice of DOE's determination on the Application for Interim Waiver will be published in the **Federal Register**.

(2) *Consequences of filing application.* The filing of an Application for Interim Waiver will not constitute grounds for noncompliance with any requirements of this subpart, until an Interim Waiver has been granted.

(3) *Criteria for granting.* The Assistant Secretary for Energy Efficiency and Renewable Energy will grant an Interim Waiver from test procedure requirements if he or she determines that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or if the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver.

(4) *Duration.* An interim waiver will terminate 180 days after issuance or upon the determination on the Petition for Waiver, whichever occurs first. DOE may extend an interim waiver for up to 180 days or modify its terms based on relevant information contained in the record and any comments received subsequent to issuance of the interim waiver. DOE will publish in the **Federal Register** notice of such extension and/or any modification of the terms or duration of the interim waiver.

(f) *Provisions specific to waivers.* (1) *Rebuttal by petitioner.* Following publication of the Petition for Waiver in the **Federal Register**, a petitioner may, within 10 working days of receipt of a copy of any comments submitted in accordance with paragraph (b)(1) of this section, submit a rebuttal statement to the Assistant Secretary for Energy Efficiency and Renewable Energy. A petitioner may rebut more than one response in a single rebuttal statement.

(2) *Disposition of petition.* DOE will notify the petitioner in writing as soon as practicable of the disposition of each Petition for Waiver. The Assistant Secretary for Energy Efficiency and Renewable Energy will issue a decision on the petition as soon as is practicable following receipt and review of the Petition for Waiver and other applicable documents, including, but not limited to, comments and rebuttal statements.

(3) *Consequence of filing petition.* The filing of a Petition for Waiver will not constitute grounds for noncompliance with any requirements of this subpart, until a waiver or interim waiver has been granted.

(4) *Granting: criteria, conditions, and publication.* The Assistant Secretary for Energy Efficiency and Renewable Energy will grant a waiver, if he or she determines that the basic model for which the waiver was requested contains a design characteristic which either prevents testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. The Assistant Secretary for Energy Efficiency and Renewable Energy may grant a waiver subject to conditions, which may include adherence to alternate test procedures. DOE will promptly publish in the **Federal Register** notice of each waiver granted or denied, and any limiting conditions of each waiver granted.

(g) *Revision of regulation.* Within one year of the granting of any waiver, the Department will publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. As soon thereafter as practicable, the Department will publish in the **Federal Register** a final rule. Such waiver will terminate on the effective date of such final rule.

(h) *Exhaustion of remedies.* In order to exhaust administrative remedies, any person aggrieved by an action under this section must file an appeal with the DOE's Office of Hearings and Appeals as provided in 10 CFR Part 1003, subpart C.

§ 431.602 Preemption of state regulations for commercial HVAC & WH products.

Beginning on the effective date of such standard, an energy conservation standard set forth in this part for a commercial HVAC & WH product supersedes any State or local regulation concerning the energy efficiency or energy use of that product, except as provided for in section 345(b)(2)(B)–(D) of the Act.

§ 431.603 Maintenance of records.

(a) If you are the manufacturer of any commercial HVAC & WH product, you must establish, maintain and retain records of the following:

(1) The test data for all testing conducted pursuant to 10 CFR part 431, including any testing conducted by a VICP; and

(2) The development, substantiation, application, and subsequent verification of any AEDM.

(b) You must organize such records and index them so that they are readily accessible for review. The records must include the supporting test data associated with tests performed on any test units to satisfy the requirements of this subpart (except tests performed by the Department directly).

(c) You must retain all such records for a period of two years from the date that production of all units of the commercial equipment for the basic model has ceased. You must retain records in a form allowing ready access to the Department upon request.

§ 431.604 Imported equipment.

(a) Under sections 331 and 345 of the Act, any person importing any commercial HVAC & WH product into the United States must comply with the provisions of the Act and of this part, and is subject to the remedies of this part.

(b) Any commercial HVAC & WH product offered for importation in

violation of the Act and of this part will be refused admission into the customs territory of the United States under rules issued by the Secretary of the Treasury, except that the Secretary of the Treasury may, by such rules, authorize the importation of such covered product upon such terms and conditions (including the furnishing of a bond) as may appear to the Secretary of Treasury appropriate to ensure that such covered product will not violate the Act and this part, or will be exported or abandoned to the United States.

§ 431.605 Exported equipment.

Under sections 330 and 345 of the Act, this part does not apply to any commercial HVAC & WH product if:

(a) Such product is manufactured, sold, or held for sale for export from the United States (or such product was imported for export), unless such product is, in fact, distributed in commerce for use in the United States, and

(b) Such product, when distributed in commerce, or any container in which it is enclosed when so distributed, bears a stamp or label stating that such covered product is intended for export.

§ 431.606 Subpoena.

Under sections 329(a) and 345 of the Act, for purposes of carrying out this part, the Secretary or the Secretary's designee, may sign and issue subpoenas for the attendance and testimony of witnesses and the production of relevant books, records, papers, and other documents, and administer the oaths. The Secretary must pay witnesses summoned under the provisions of this section the same fees and mileage as paid to witnesses in the courts of the United States. In case of contumacy by, or refusal to obey a subpoena served upon, any persons subject to this Part, the Secretary may seek an order from the District Court of the United States for any District in which such person is found or resides or transacts business requiring such person to appear and give testimony, or to appear and produce documents. Such court can punish the failure to obey such order as a contempt thereof.

§ 431.607 Confidentiality.

Under the provisions of 10 CFR 1004.11, any person submitting information or data which the person believes to be confidential and exempt by law from public disclosure should submit one complete copy, and fifteen copies from which the information believed to be confidential has been deleted. In accordance with the procedures established at 10 CFR 1004.11, the Secretary must make his own determination with regard to any claim that information submitted be exempt from public disclosure.

[FR Doc. 99–31670 Filed 12–10–99; 8:45 am]

BILLING CODE 6450–01–P

federal register

Monday
December 13, 1999

Part III

Department of Housing and Urban Development

Community Development Work Study Program, Funding Availability; Fiscal Year 2000; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4539–N–01]

Notice of Funding Availability for the Community Development Work Study Program Fiscal Year 2000

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Funding Availability (NOFA).

SUMMARY: This NOFA announces the availability of approximately $3.0 million for the Community Development Work Study Program (CDWSP).

Purpose of the Program: To provide assistance to economically disadvantaged and minority graduate students who participate in community development work study programs and are enrolled full-time in a graduate community building academic degree program.

Available Funds: Approximately $3 million from FY 2000 appropriations (plus any additional funds recaptured from prior appropriations).

Eligible Applicants: Institutions of higher education, area-wide planning organizations (APOs), and States.

Application Deadline: February 25, 2000.

Matching Requirements: None.

ADDITIONAL INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget, under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2528–0175. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

I. Application Due Date, Application Kits, and Technical Assistance.

Application Due Date: Your completed application must be received at the address listed below on February 25, 2000, based on the following submission requirements.

Application Procedures: Mailed Applications. Your application will be considered as filed on time if it is postmarked on or before 12:00 midnight on the application due date and received at the designated address below on or within ten (10) days of the application due date.

Applications Sent by Overnight/ Express Mail Delivery. If your application is sent by overnight or express mail, it will be considered as filed on time if it is received on or before the application due date, or if you submit documentary evidence that the application was placed in transit with the overnight delivery service by no later than the specified application due date.

Hand Carried Applications. If you hand carry your application on or before the application due date, it must be brought to the specified location and room number between the hours of 8:45 am and 5:15 pm, Eastern Standard Time. If you hand carry your application on the application due date, it will be accepted in the South Lobby of the HUD Headquarters Building at the above address from 5:15 pm to the 12:00 midnight, Eastern Standard Time.

Address for Submitting Applications: Your completed applications (one original and two copies) must be submitted to: Processing and Control Branch, Office of Community Planning and Development, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7251, Washington, DC 20410. When submitting your application, you should include your name, mailing address (including zip code) and telephone number (including area code).

For Application Kits, Further Information, and Technical Assistance:

For Application Kits: You may obtain an application kit by calling HUD USER at 1–800–245–2691. If you have a hearing or speech impairment, you may call the following TTY number: 1–800–483–2209. You may also access the application kit on the Internet from HUD's web site at www.hud.gov. When requesting an application, you should refer to CDWSP and include your name, mailing address (including zip code) and telephone number (including area code).

For Further Information and Technical Assistance: Jane Karadbil, Office of University Partnerships at (202) 708–1537, ext. 5918. Hearing- or speech-impaired individuals may call HUD's TTY number (202) 708–0770, or the Federal Information Relay Service at 1–800–877–8339. Other than the ''800'' number, these numbers are not toll-free. Ms. Karadbil can also be reached via the Internet at: Jane__R.__Karadbil@hud.gov.

II. Amount Allocated

Up to $3 million, plus any additional funds recaptured from prior appropriations.

III. Program Description; Eligible Applicants; Eligible Activities and Costs

(A) Program Description

CDWSP funds two-year grants to institutions of higher education, area-wide planning organizations, and States to provide assistance to economically disadvantaged and minority graduate students who participate in a community development work study program and are enrolled full-time in a graduate community building academic degree program. Grants will cover the academic period August 2000 through August 2002.

(B) Eligible Applicants

You must demonstrate that you are eligible to apply for the program. You are an eligible applicant if (a) you are an institution of higher education offering graduate degrees in a community development academic program, (b) an Area-wide Planning Organization (APO) applying on behalf of two or more eligible institutions of higher education located in the same SMSA or non-SMSA as the APO (as a result of a final rule for the program published at 24 CFR 570.415, institutions of higher education are permitted to choose whether to apply independently or through an APO); or (c) a State applying on behalf of two or more eligible institutions of higher education located in the State. If a State is approved for funding, institutions of higher education located in the State are not eligible recipients.

(C) Eligible Activities and Costs

You may request no more than $15,000 per year per student, for a total of two years. The total is broken down as follows: an administrative allowance of $1,000 per student per year; a work stipend of no more than $9,000 per student per year; and tuition, fees, and additional support of no more than $5,000 per student per year.

IV. Program Requirements

(A) Statutory Requirements

You must comply with all statutory and regulatory requirements applicable to this program. CDWSP regulations can be found at 24 CFR part 570.415. Copies of the regulations are available on request from HUD User.

(B) Eligibility of the Degree Program

An eligible community building academic degree program includes but is not limited to graduate degree programs in community and economic development, community planning, community management, public administration, public policy, urban economics, urban management, and

urban planning. The term excludes social and humanistic fields such as law, economics (except for urban economics), education, sociology, social work, business administration, and history. The term also excludes joint degree programs except where both joint degree fields have the purpose and focus of educating students in community building.

You are encouraged to contact Jane Karadbil at the above listed telephone number if you have any questions about eligibility of a proposed degree program.

(C) Affirmative Fair Housing Marketing

You are not required to respond to HUD's affirmative fair housing marketing requirements.

V. Application Selection Process

(A) Two Types of Reviews

Two types of reviews will be conducted—a threshold review to determine applicant eligibility and a rating based on the selection criteria for all applications that pass the threshold review.

(B) Threshold Criteria for Funding Consideration

(1) General Threshold Requirements

You must meet the following threshold requirement before an application can be evaluated, rated, and ranked:

(a) *Eligibility.* You must be eligible to apply for the program.

(b) *Compliance with nondiscrimination requirements.* You must comply with all Fair Housing and civil rights laws, statutes, regulations, and executive orders as enumerated in 24 CFR 5.105(a). If you: (i) have been charged with a systemic violation of the Fair Housing Act by the Secretary alleging ongoing discrimination; (ii) are a defendant in a Fair Housing lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or (iii) have received a letter of noncompliance findings under Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, or section 109 of the Housing and Community Development Act, you are not eligible to apply for funding under this NOFA until you have resolved such charge, lawsuit, or letter of findings to the satisfaction of the Department.

(c) *Number of students to be assisted.* You may request funding for as many as five students, and in no case, for no less than three students, since work plan and other facets of the evaluation are assessed in the context of the number of students for whom funding is requested. If your application requests fewer than three or more than five students per institution, it will be disqualified.

(d) *Eligibility of the applicant and its proposed academic degree program.* You must demonstrate that you are eligible to participate in the program, by demonstrating that you are either an institution of higher education that offers graduate degrees in at least one eligible community building academic program or you are an APO or State submitting an application on behalf of such institutions. Your application must also demonstrate that each institution participating in your program has the faculty to carry out its activities under your program. Each work placement agency must be involved in community building and must be an agency of a State or unit of local government, an area-wide planning organization, an Indian tribe, or a private nonprofit organization.

(e) *Graduation rates.* You must maintain at least a 50 percent rate of graduation of students from the FY 1997 funding round, which covered school years September 1997 to September 1999, in order to be eligible to participate in the current round of CDWSP funding. If you were funded under the FY 1997 CDWSP funding round and did not maintain such a rate, you will be excluded from participating in the FY 2000 funding round.

(C) Factors for Award Used To Evaluate and Rate Applications

To review and rate applications, the Department may establish panels including persons not currently employed by HUD to obtain certain expertise and outside points of view, including views from other Federal agencies. You will be evaluated competitively and ranked against all other applicants that have applied for the same funding program.

(D) General Factors for Award Used To Evaluate and Rank Applications

The factors for rating and ranking your application, and maximum points for each factor, are provided below. The maximum number of points for each program is 100. The rating of your organization and staff, unless otherwise specified, will include any sub-contractors, consultants, sub-recipients, and members of consortia that are firmly committed to your project, to the extent of their participation.

(1) Quality of the Academic Program

(30 points if you have never received a CDWSP grant) (25 points if you have previously received a CDWSP grant).

HUD will evaluate the quality of the academic program you offer (or in the case of an application from an APO or State, those offered by the institutions included in your application) including, without limitation, the:

(i) Quality of your course offerings in terms of their depth, sophistication, quality, and emphasis on applied coursework;

(ii) Appropriateness of your course offerings for preparing students for careers in community building; and

(iii) Qualifications of your faculty and percentage of their time devoted to teaching and research in community building.

(2) Quality of the Work Placement Assignments (15 Points)

HUD will evaluate the extent to which participating students will receive a sufficient number and variety of work placement assignments, the assignments will provide practical and useful experience to students participating in your program, and the assignments will further the participating students' preparation for professional careers in community building. In applying this factor, HUD will consider the quality in terms of relevance to community building and variety of work placement agencies and the quality and variety of projects/experiences at each agency and overall. You must have a plan for rotating students among work placement agencies. Students engaging in community building projects through an institution of higher education may do so only through a community outreach center, which will in that instance be considered a work placement agency even if the community building projects are undertaken with or through a separate organization or entity. Accordingly, students engaging in community building through an institution of higher education's outreach center should do so during only part of their academic program and should rotate to other work placement agency responsibilities identified in the CDWSP regulations.

(3) Effectiveness of Program Administration (18 Points)

HUD will evaluate the degree to which you will be able to coordinate and administer your program. HUD will allocate the maximum points available under this criterion equally among the following three considerations, except that the maximum points available under this criterion will be allocated equally only between (i) and (ii), where you have not previously administered a CDWSP-funded program.

(i) The strength and clarity of your plan for placing CDWSP students on rotating work placement assignments

and for monitoring CDWSP students' progress both academically and in their work placement assignments;

(ii) The degree to which the individual who will coordinate and administer your program has clear responsibility, ample available time, and sufficient authority to do so;

(iii) The effectiveness of your prior coordination and administration of a CDWSP-funded program, where applicable (including the timeliness and completeness of your compliance with CDWSP reporting requirements). In addressing the timeliness of reports, you should review your prior CDWSP grant agreements and reports and compare when reports were due with when the reports actually were submitted. You should also describe your timeliness in drawing down grant funds.

(4) Demonstrated Commitment of the Applicant to Meeting the Needs of Economically Disadvantaged and Minority Students (10 Points)

HUD will evaluate your commitment to meeting the needs of economically disadvantaged and minority students as demonstrated by your policies and plans, and past efforts and successes in, recruiting, enrolling and financially assisting economically disadvantaged and minority students, including the provision of reasonable accommodations for students with disabilities. If you are an APO or State, HUD will consider the demonstrated commitment of each institution of higher education on whose behalf you are applying; HUD will also consider your demonstrated commitment to recruit and hire economically disadvantaged and minority students.

(5) Rates of Graduation (7 Points)

HUD will evaluate the rates of students previously enrolled in a community building academic degree program, specifically (where applicable) graduation rates from any previously funded CDWSP academic programs or similar programs. This factor measures the rate of graduation for all applicable years and awards points based on the extent to which the applicant exceeds a 50% graduation rate each applicable year.

(6) Extent of Financial Commitment (10 Points)

HUD will evaluate your commitment and ability to assure that CDWSP students will receive sufficient financial assistance above and beyond the CDWSP funding to complete their academic program in a timely manner and without working in excess of 20 hours a week during the school year. When addressing this issue, you should, among other responsive information, delineate the full costs budgeted annually for a student, explain the basis for your budget and explain how the financial assistance package you will offer to each CDWSP student will meet that budget. You should have an adequate means of addressing reasonable variations in budget needs among students and for addressing emergency financial needs of students.

(7) Likelihood of Fostering Students' Permanent Employment in Community Building (10 Points if You Have Never Received a CDWSP Grant) (15 Points if You Have Previously Received a CDWSP Grant)

HUD will evaluate the extent to which your proposed program will lead participating students directly and immediately to permanent employment in community building, as indicated by:

(i) Your past success in placing your graduates (particularly CDWSP-funded and similar program graduates, where applicable) in permanent employment in community building; and

(ii) The amount of faculty/staff time and resources you devote to assisting students (particularly students in CDWSP-funded and similar programs, where applicable) in finding permanent employment in community building.

VI. Application Submission Requirements

(A) Content of Application

Your application should include an original and two copies of the items listed below. In order to be able to recycle paper, you should not submit applications in bound form; binder clips or loose leaf binders are acceptable. Also, please do not use colored paper.

(1) Transmittal Letter, which must be signed by your Chief Executive Officer, or his or her designee. If a designee signs, your application must contain a copy of the official delegation of signatory authority. The letter must contain an assurance that you were not awarded a CDWSP grant in Fiscal Year 1997 (which was to cover the school years August 1997 to August 1999) or were awarded a Fiscal Year 1997 grant and had a 50 percent or higher rate of graduation of CDWSP students funded through the grant.

(2) Designation of your degree program(s) under which students will be educated.

(3) Executive Summary.

(4) Narrative statement addressing the Factors for Award in Section V. No attachments are permitted.

(5) Management/Work Plan.

(6) Recipient/Student Binding Agreement. HUD does not provide a model or sample format for this document.

(7) Recipient/Work Placement Agreement. HUD does not provide a model or sample format for this document.

(8) Budget. Using the forms provided for the August 2000 through August 2002 funding period.

(9) Application for Federal Assistance(HUD–424).

(10) Standard Form for Assurances—Non-Construction Programs (SF–424B).

(11) Drug-Free Workplace Certification (HUD–50070).

(12) Certification of Payments to Influence Transactions (Form HUD–50071).

(13) Applicant/Recipient Disclosure Update Report (HUD–2880).

(14) Assurance regarding the applicant's financial management systems.

(B) Final selection

If your application passes the threshold requirements, it will be rated and then ranked based on its total score on the selection factors. Your application will be considered for selection based on its rank order. HUD may make awards out of rank order to achieve geographic diversity, and may provide assistance to support a number of students that is less than the number requested under your application or a lower funding level per student, in order to provide assistance to as many highly ranked applications as possible.

If there is a tie in the point scores of two applications, the rank order will be determined by the scores on the selection factor entitled ''Quality of the Academic Program.'' The application with the most points on this factor will be given the higher rank. If there is still a tie, the rank order will be determined by the applicants' scores on the selection factor entitled ''Effectiveness of program administration.'' The application with the most points for this selection factor will be given the higher rank.

If there are insufficient funds to fund an application, even if the request is reduced to the minimum number of students which could be funded (*i.e.*, three students per institution of higher education), HUD may select the next ranked application which would not exceed the funding left available and still fund the minimum number of students allowed.

HUD reserves the right to make selections out of rank order to provide for geographic distribution of funded CDWSPs. If HUD decides to use this

option, it will do so only if two adjacent HUD regions do not yield at least one fundable CDWSP on the basis of rank order. If this occurs, HUD will fund the highest ranking applicant within the two regions.

HUD reserves the right to reduce your amount of funding in order to fund as many highly ranked applications as possible. Additionally, if funds remain after funding the highest ranked application, HUD may fund part of the next highest ranking application (as long as it would provide assistance to the minimum number of students required to be served) in a given program area. If you turn down the award offer, HUD will make the same determination for the next highest-ranking application. If funds remain after all selections have been made, the remaining will be carried over to the next funding cycle's competition.

(C) Negotiations

After selections have been made, HUD may require winners to participate in negotiations to determine the Grant Budget. In cases where HUD cannot successfully conclude negotiations, or you fail to provide HUD with requested information, an award will not be made. In such instances, HUD may elect to offer an award to the next highest ranking applicant, and proceed with negotiations with the next highest applicant.

VII. Corrections to Deficient Applications

After the application due date, HUD may not, consistent with 24 CFR part 4, subpart B, consider unsolicited information from you. HUD may contact you, however, to clarify an item in the application or to correct technical deficiencies. You should note, however, that HUD may not seek a clarification of items or responses that improve the substantive quality of your response to any eligibility or selection criterion. *Examples* of curable (correctable) technical deficiencies include failure to submit the proper certifications or failure to submit your application containing an original signature by an authorized official. In each case, HUD will notify you in writing by describing the clarification or technical deficiency. HUD will notify you by facsimile or by return receipt requested. You must submit clarifications or corrections of technical deficiencies in accordance with the information provided by HUD within 14 calendar days of the date of receipt of the HUD notification. If you do not correct the deficiency within this time period, your application will be rejected as incomplete.

VIII. Environmental Requirements

This NOFA does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this NOFA is categorically excluded from environmental review under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321) and no Finding of No Significant Impact is needed. In addition, the provision of assistance under this NOFA is categorically excluded from environmental review under § 50.19(b)(3) and (b)(9).

IX. Other Matters

(A) Federalism, Executive Order 13132

This notice does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of Executive Order 13132 (entitled ''Federalism'').

(B) Prohibition Against Lobbying Activities

Applicants for funding under this NOFA (except Indian Housing Authorities established by tribal governments exercising their sovereign powers with respect to expenditures specifically permitted by Federal law) are subject to the provision of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1991, 31 U.S.C. 1352 (the Byrd Amendment) and to the provisions of the Lobbying Disclosure Act of 1995, Pub. L. 104–65 (December 19, 1995).

The Byrd Amendment, which is implemented in regulations at 24 CFR part 87, prohibits applicants for Federal contracts and grants from using appropriated funds to attempt to influence Federal Executive or legislative officers or employees in connection with obtaining such assistance, or with its extension, continuation, renewal, amendment, or modification. The Byrd Amendment applies to the funds that are the subject of this NOFA. Therefore, applicants must file a certification stating that they have not made and will not make any prohibited payments and, if any payments or agreement to make payments of nonappropriated funds for these purposes have been made, a form SF-LLL disclosing such payments must be submitted. The certification and the SF-LLL are included in the application kit.

The Lobbying Disclosure Act of 1995, Pub. L. 104–65 (December 19, 1995), which repealed section 112 of the HUD Reform Act and resulted in elimination of the regulations at 24 CFR part 86, requires all persons and entities who lobby covered Executive or Legislative Branch officials to register with the Secretary of the Senate and the Clerk of the House of Representatives and file reports concerning their lobbying activities.

(C) Section 102 of the HUD Reform Act; Documentation and Public Access Requirements

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and the final rule codified at 24 CFR part 4, subpart A, published on April 1, 1996 (61 FR 1448), contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published, at 57 FR 1942, a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

(1) Documentation and Public Access Requirements

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis.

(2) Disclosures

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All

reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

(D) Section 103 of the HUD Reform Act

HUD's regulations implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a), codified in 24 CFR part 4, apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by regulations from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics-related questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact HUD's Ethics Law Division (202) 708–3815 (voice), (202) 708–1112 (TTY). (These are not toll-free numbers.) For HUD employees who have specific program questions, the employee should contact the appropriate Field Office Counsel or Headquarters Counsel for the program to which the question pertains.

(E) Catalog of Federal Domestic Assistance

The Catalogue of Federal Domestic Assistance number is: 14.234.

X. Authority

Section 107(c) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*) authorizes CDWSP. Regulations for the program appear at 24 CFR 570.415.

Dated: December 7, 1999.

Lawrence L. Thompson,

Deputy Assistant Secretary for Policy Development.

[FR Doc. 99–32112 Filed 12–10–99; 8:45 am]

BILLING CODE 4210–29–P

federal register

Monday
December 13, 1999

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 450

Financial Responsibility Requirements for Licensed Reentry Activities; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 450

[Docket No. FAA–1999–6265; Notice 99–17]

RIN 2120–AG76

Financial Responsibility Requirements for Licensed Reentry Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The FAA is soliciting comments on proposed financial responsibility and allocation of risk requirements for reentry activities carried out under an FAA license. An additional comment period extending through January 21, 2000, on the notice of proposed rulemaking published October 6, 1999 at 64 FR 54448–54472, is provided for this purpose.

DATES: Comments must be received by January 21, 2000.

ADDRESSES: Comments on this document should be mailed or delivered, in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA–1999–6265, 400 Seventh Street SW., Room Plaza 401, Washington, DC 20590. Comments may be filed and examined in room Plaza 401 between 10:00 and 5 p.m. weekdays, except Federal holidays. Comments also may be sent electronically to the Dockets Management System (DMS) at the following Internet address, using the instructions indicated at that web site: *http://dms.dot.gov/.*

FOR FURTHER INFORMATION CONTACT: Ms. Esta M. Rosenberg, Attorney-Advisor, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, U.S. Department of Transportation (202) 366–9320.

SUPPLEMENTARY INFORMATION:

Background

On October 6, 1999, the FAA's Associate Administrator for Commercial Space Transportation published a notice of proposed rulemaking (NPRM) entitled, ''Financial Responsibility Requirements for Licensed Reentry Activities'' (Notice No. 99–17, 64 FR 54448–54472). The NPRM solicited comments on the FAA's approach to implementing and assuring compliance with financial responsibility requirements for licensed reentry activities. Comments were solicited for a 60-day period, with a docket closing date of December 6, 1999.

The FAA received two requests for an extension of time of 60 days in which to submit comments on the NPRM. One request was submitted by the Chairman, risk Management Working Group of the Commercial Space Transportation Advisory Committee (COMSTAC). A second request was submitted jointly by three aerospace companies. The requests were based on the need for additional time to analyze issues raised by the NPRM in the interest of developing more focused, thoughtful and responsive comments.

Additional Comment Period

The comment period closed on December 6, 1999, which prevented an extension. In order to allow interested members of the public additional time for a more thorough review of issues and drafting of responsive comments, the FAA finds that it is in the public interest to reopen the comment period. Accordingly, the comment period is reopened through January 21, 2000. Late-filed comments will be considered to the extent practicable. However, no further extension of the comment period is contemplated.

Issued in Washington, DC, on December 6, 1999.

Joseph A. Hawkins,

Deputy Associate Administrator for Commercial Space Transportation.

[FR Doc. 99–32272 Filed 12–9–99; 9:56 am]

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Federal Register

Vol. 64, No. 238

Monday, December 13, 1999

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FEDERAL REGISTER PAGES AND DATE, DECEMBER

67147–67468 1
67469–67692 2
67693–67996 3
67997–68274 6
68275–68614 7
68615–68930 8
68931–69164 9
69165–69370 10
69371–69628 13

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7256 67691
7257 68269
7258 69161
7259 69163
Executive Orders:
June 24, 1914
(Revoked in part by PLO 7416) 67295
April 28, 1917
(Revoked in part by PLO 7416) 67295
February 11, 1918
(Revoked in part by PLO 7416) 67295
July 10, 1919
(Revoked in part by PLO 7416) 67295
May 25, 1921
(Revoked in part by PLO 7416) 67295
April 17, 1926
(Revoked in part by PLO 7416) 67295
February 7, 1930
(Revoked in part by PLO 7416) 67295
13143 68273
Administrative Orders:
Memorandums:
November 29, 1999 68275

5 CFR

410 69165
530 69165
531 69165
532 69183
534 68931
536 69165
550 69165
551 69165
575 69165
591 69165
610 69165
1630 67693
6801 68615

7 CFR

29 67469
246 67997
319 68001
761 69322
905 69371
906 69375
915 69380
1407 67470
Proposed Rules:
955 69419
985 69421
989 69204
1032 67201

8 CFR

235 68616
Proposed Rules:
100 68638

9 CFR

78 67695
94 67695
130 .....67697, 67699

10 CFR

51 68005
72 67700
850 68854
Proposed Rules:
26 67202
431 69598

11 CFR

Proposed Rules:
100 68951

12 CFR

503 69183
505 69183
557 69183
559 69183
563 69183
572 69183

13 CFR

Proposed Rules:
120 67205

14 CFR

25 .....67147, 67701, 67705, 69383
39 .....67471, 67706, 67708, 67710, 68277, 68618, 68620, 68623, 68625, 68628, 69185, 69386, 69389, 69390, 69392, 69394
65 68916
71 .....67712, 67713, 67714, 67715, 67716, 68007, 68008, 68009, 68010, 68931, 68932
97 .....67473, 67476
Proposed Rules:
25 .....67804, 69425
39 .....67206, 67806, 67807, 68056, 68058, 68060, 68062, 68296, 68297, 68300, 68302, 68639, 68640, 68642, 68644, 68646, 68956, 68959, 68960, 68963, 69206, 69208, 69428
71 .....67525, 67810, 69430, 69431
450 69628

15 CFR

303 67148
806 67716

902 ..... 68228, 68932
2015 67152

16 CFR

4 69397

17 CFR

3 68011
32 68011
211 ..... 67154, 68936
270 68019
Proposed Rules:
Ch. II 69074
4 68304

19 CFR

12 67479
132 67481
163 67481

20 CFR

404 67719
Proposed Rules:
222 68647
325 67811
330 67811
335 67811
336 67811
604 ..... 67811, 67972

21 CFR

10 69188
12 69188
176 68629
178 67483
179 69190
203 67720
205 67720
510 ..... 69188, 69191
520 68289
Proposed Rules:
10 69209
12 69209
314 67207
510 69209
601 67207
1309 67216

24 CFR

985 67982

26 CFR

1 67763
20 ..... 67763, 67767
25 67767
301 67767
601 69398
602 67767

28 CFR

0 68307
551 68264

29 CFR

4011 67163
4022 67163
4044 67165
Proposed Rules:
2520 67436
2700 68649

30 CFR

913 68024
918 68289
946 69399
Proposed Rules:
280 68649

31 CFR

Proposed Rules:
28 69432

32 CFR

287 67166
Proposed Rules:
199 67220

33 CFR

100 ..... 67168, 67169, 69192
117 ..... 67169, 67773, 68291
127 67170
154 67170
155 67170
159 67170
164 67170
183 67170
207 69402
Proposed Rules:
140 68416
141 68416
142 68416
143 68416
144 68416
145 68416
146 68416
147 68416

34 CFR

304 69138

36 CFR

1220 67662
1222 67662
1228 ..... 67662, 67634, 68945
Proposed Rules:
217 69446
219 69446

37 CFR

1 ..... 67486, 67774
2 ..... 67486, 67774
253 67187

38 CFR

Proposed Rules:
3 67528

39 CFR

3001 67487
Proposed Rules:
111 68965

40 CFR

9 ..... 68546, 68722
52 ..... 67188, 67491, 67495, 67781, 67784, 67787, 68031, 68034, 68292, 68293, 69404
63 ..... 67789, 67793
82 68039
122 68722
123 68722
124 68722
141 67450
143 67450
144 68546
145 68546
146 68546
180 ..... 68044, 68046, 68631, 69407, 69409
300 68052
Proposed Rules:
50 68659
52 ..... 67222, 67534, 67535, 68065, 68066, 69211, 69448
70 68066
81 68659
85 68310
86 68310
194 68661
260 68968
372 68311
761 69358

41 CFR

Ch. 301 67670
300-3 67670
301-10 67670

42 CFR

Proposed Rules:
68c 69213
433 67223
438 67223
1001 69217

45 CFR

1641 67501
Proposed Rules:
270 68202
2522 67235
2525 67235

46 CFR

28 67170
30 67170
32 67170
34 67170
35 67170
38 67170
39 67170
54 67170
56 67170
58 67170
61 67170
63 67170
76 67170
77 67170
78 67170
92 67170
95 67170
96 67170
97 67170
105 67170
108 67170
109 67170
110 67170
111 67170
114 67170
119 67170
125 67170
151 67170
153 67170
154 67170
160 67170
161 67170
162 67170
163 67170
164 67170
170 67170
174 67170
175 67170
182 67170
190 67170
193 67170
195 67170
199 67170

47 CFR

Ch. 1 68053
1 68946
36 ..... 67372, 67416
51 68637
54 ..... 67372, 67416
69 67372
76 ..... 67193, 67198
90 67199
Proposed Rules:
73 ..... 67236, 67535, 68662, 68663, 68664, 68665

48 CFR

1815 69415
Proposed Rules:
1 67986
12 67992
13 67992
22 ..... 67986, 67992
25 67446
30 67814
52 ..... 67446, 67986, 67992
919 68072
952 68072

49 CFR

219 69193
225 69193
Proposed Rules:
40 69076

50 CFR

17 ..... 68508, 69195
222 69416
223 69416
600 67511
622 68932
649 68228
679 ..... 68054, 68228, 68949
Proposed Rules:
17 ..... 67814, 69324
18 68973
226 ..... 67536, 69448
648 67551
679 ..... 67555, 69219, 69458

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 13, 1999

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- Delaware; published 10-12-99
- District of Columbia; published 10-27-99
- Maryland; published 10-28-99

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
- Texas; published 10-13-99

Hazardous waste program authorizations:
- Georgia; published 10-14-99

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- 2,4-dichlorophenoxyacetic acid; published 12-13-99
- Clomazone; published 12-13-99

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- Communications Act of 1934; non-accounting safeguards; implementation; published 11-12-99

Radio stations; table of assignments:
- Ohio; published 11-4-99

FEDERAL TRADE COMMISSION

Privacy Act; implementation; published 12-13-99

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:
- Virginia; published 12-13-99

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):
- Contracting by negotiation; published 12-13-99

SECURITIES AND EXCHANGE COMMISSION

Investment companies:
- Investment advisers; temporary exemption; published 12-6-99

TRANSPORTATION DEPARTMENT

Coast Guard

Drawbridge operations:
- Connecticut; published 11-12-99
- Maine; published 11-12-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Boeing; published 11-26-99
- General Electric Co.; published 11-26-99

Noise standards:
- Propeller-driven small airplanes; published 10-13-99

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau

Antiterrorism and Effective Death Penalty Act of 1996; implementation:
- Plastic explosives; detection agents requirement; published 10-14-99

TREASURY DEPARTMENT

Internal Revenue Service

Procedural rules:
- Penalty mail use in location and recovery of missing children; published 12-13-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Eggs and egg products:
- Shell eggs; refrigeration requirements; comments due by 12-21-99; published 10-22-99

Sheep and lamb promotion, research, and information order; comments due by 12-23-99; published 11-23-99

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Interstate transportation of animals and animal products (quarantine):
- Tuberculosis in cattle and bison—
  - State and area classifications; comments due by 12-20-99; published 10-20-99

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and threatened species:
- Beluga whale; Cook Inlet, AK, stock designation as depleted; comments due by 12-20-99; published 10-19-99

Fishery conservation and management:
- Caribbean, Gulf, and South Atlantic fisheries—
  - Gulf of Mexico and South Atlantic coastal migratory pelagic resources; comments due by 12-20-99; published 11-4-99
- Magnuson-Stevens Act provisions—
  - Essential fish habitat; comments due by 12-23-99; published 11-8-99

Marine mammals:
- Incidental taking—
  - BP Exploration (Alaska); Beaufort Sea; offshore oil and gas platforms construction and operation; comments due by 12-21-99; published 10-22-99

DEFENSE DEPARTMENT

Acquisition regulations:
- Information disclosure; comments due by 12-20-99; published 10-21-99

Civilian health and medical program of uniformed services (CHAMPUS):
- TRICARE program—
  - Double coverage; third party recoveries; comments due by 12-20-99; published 10-19-99

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
- Generic maximum achievable control technology
  - Surge control and bottoms receiver vessels; comments due by 12-22-99; published 11-22-99

Air pollution control; new motor vehicles and engines:
- Light-duty vehicles and trucks—
  - Pre-production certification procedures; compliance assurance programs; reconsideration petition; comments due by 12-20-99; published 11-5-99

Air programs:
- Outer Continental Shelf regulations—
  - California; consistency update; comments due by 12-20-99; published 11-19-99

Air programs; approval and promulgation; State plans for designated facilities and pollutants:
- Indiana; comments due by 12-20-99; published 11-18-99

Air quality implementation plans; approval and promulgation; various States:
- California; comments due by 12-20-99; published 11-19-99
- Colorado et al.; comments due by 12-20-99; published 11-19-99
- Indiana; comments due by 12-20-99; published 11-18-99
- Source-specific plans—
  - Salt River Pima-Maricopa Indian Community, AZ; comments due by 12-23-99; published 11-23-99
  - Salt River Pima-Maricopa Indian Community, AZ; comments due by 12-23-99; published 11-23-99

Pesticide programs:
- Pesticide container and containment standards; comments due by 12-20-99; published 10-21-99

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Metolachlor; comments due by 12-20-99; published 10-21-99
- Pyriproxyfen; comments due by 12-20-99; published 10-21-99
- Pyrithiobac sodium salt; comments due by 12-20-99; published 10-20-99
- Sethoxydim; comments due by 12-20-99; published 10-21-99
- Tebufenozide, etc.; comments due by 12-20-99; published 10-21-99

Superfund program:
- National oil and hazardous substances contingency plan—
  - National priorities list update; comments due

by 12-21-99; published 10-22-99

Toxic substances:

Inventory update rule; amendments; comments due by 12-24-99; published 10-22-99

Significant new uses—

Ethane, 2-chloro-1,1,1,2-tetrafluoro-, etc.; comments due by 12-20-99; published 11-19-99

Water programs:

Water quality planning and management; comments due by 12-22-99; published 10-1-99

FEDERAL COMMUNICATIONS COMMISSION

Digital television stations; table of assignments:

Florida; comments due by 12-23-99; published 11-4-99

Georgia; comments due by 12-23-99; published 11-4-99

Texas; comments due by 12-20-99; published 11-2-99

Radio and television broadcasting:

Class A low power television service; establishment; comments due by 12-21-99; published 10-22-99

Radio stations; table of assignments:

Louisiana; comments due by 12-20-99; published 11-4-99

Ohio; comments due by 12-20-99; published 11-4-99

FEDERAL DEPOSIT INSURANCE CORPORATION

Asset purchase restrictions; comments due by 12-20-99; published 9-21-99

FEDERAL TRADE COMMISSION

Trade regulation rules:

Franchising; disclosure requirements and prohibitions; comments due by 12-21-99; published 10-22-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Biological products:

Blood safety initiative; comment period extended and public meeting; comments due by 12-22-99; published 11-9-99

Food additives:

Adjuvants, production aids, and sanitizers—

3,9-bis[2,4-bis(1-methyl-1-phenylethyl)phenoxy]-2,4,8,10-tetraoxa-3,9-diphosphaspiro [5.5]undecane; comments due by 12-23-99; published 11-23-99

Human drugs and biological products:

Evidence to demonstrate efficacy of new drugs against lethal or permanently disabling toxic substances when efficacy studies ethically cannot be conducted; comments due by 12-20-99; published 10-5-99

Protection of human subjects:

Investigational human drugs and biologics; determination that informed consent is not feasible or is contrary to best interests of recipients, etc.; comments due by 12-20-99; published 10-5-99

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Public and Indian housing:

Public housing resident management corporations; direct funding; comments due by 12-20-99; published 10-21-99

INTERIOR DEPARTMENT

National Park Service

Concession contracts; solicitation, award, and administration

Economic analysis; comments due by 12-22-99; published 11-22-99

LABOR DEPARTMENT

Mine Safety and Health Administration

Coal mine safety and health:

Samples used to determine respirable dust level when quartz is present; program policy letter; comments due by 12-23-99; published 11-23-99

NUCLEAR REGULATORY COMMISSION

Radiation protection standards:

Solid materials release at licensed facilities; regulatory framework; comments due by 12-22-99; published 10-19-99

TRANSPORTATION DEPARTMENT

Coast Guard

Merchant marine officers and seamen:

Manning requirements—

Federal pilotage for foreign-trade vessels in Maryland; comments due by 12-20-99; published 10-21-99

Ports and waterways safety:

New York Harbor, NY; safety zone; comments due by 12-20-99; published 11-19-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air carrier certification and operations:

Digital flight data recorder regulations for Boeing 737 airplanes and for Part 125 operations; revisions; comments due by 12-20-99; published 11-18-99

Airworthiness directives:

Bob Fields Aerocessories; comments due by 12-23-99; published 10-29-99

Boeing; comments due by 12-20-99; published 11-5-99

Bombardier; comments due by 12-22-99; published 11-22-99

Cessna; comments due by 12-20-99; published 11-4-99

Fokker; comments due by 12-20-99; published 11-19-99

Lockheed; comments due by 12-23-99; published 11-8-99

McDonnell Douglas; comments due by 12-20-99; published 11-4-99

Pilatus Aircraft Ltd.; comments due by 12-23-99; published 11-23-99

Class C airspace; comments due by 12-23-99; published 11-5-99

Class E airspace; comments due by 12-23-99; published 11-23-99

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

Pipeline safety:

Gas transmission and hazardous liquid pipelines in high consequence areas; enhanced safety and environmental protection; comments due by 12-20-99; published 10-21-99

TREASURY DEPARTMENT

Customs Service

Financial and accounting procedures:

Customs duties, taxes, fees and interest; underpayments and overpayments interest; comments due by 12-20-99; published 10-20-99

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Qualified lessee construction allowances; short-term leases; comments due by 12-20-99; published 9-20-99

Tax-exempt bonds issued by State and local governments; arbitrage and related restrictions; definition of investment-type property; comments due by 12-23-99; published 8-25-99

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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S. 1418/P.L. 106–130

To provide for the holding of court at Natchez, Mississippi, in the same manner as court is held at Vicksburg, Mississippi, and for other purposes. (Dec. 6, 1999; 113 Stat. 1677)

H.R. 449/P.L. 106–131

Gateway Visitor Center Authorization Act of 1999 (Dec. 7, 1999; 113 Stat. 1678)

H.R. 592/P.L. 106–132

To designate a portion of Gateway National Recreation Area as ''World War Veterans Park at Miller Field''. (Dec. 7, 1999; 113 Stat. 1681)

H.R. 747/P.L. 106–133

Arizona Statehood and Enabling Act Amendments of

1999 (Dec. 7, 1999; 113 Stat. 1682)

H.R. 748/P.L. 106–134

To amend the Act that established the Keweenaw National Historical Park to require the Secretary of the Interior to consider nominees of various local interests in appointing members of the Keweenaw National Historical Park Advisory Commission. (Dec. 7, 1999; 113 Stat. 1684)

H.R. 791/P.L. 106–135

Star-Spangled Banner National Historic Trail Study Act of 1999 (Dec. 7, 1999; 113 Stat. 1685)

H.R. 970/P.L. 106–136

Perkins County Rural Water System Act of 1999 (Dec. 7, 1999; 113 Stat. 1688)

H.R. 1794/P.L. 106–137

Concerning the participation of Taiwan in the World Health Organization [WHO]. (Dec. 7, 1999; 113 Stat. 1691)

H.R. 2079/P.L. 106–138

Terry Peak Land Transfer Act of 1999 (Dec. 7, 1999; 113 Stat. 1693)

H.R. 2886/P.L. 106–139

To amend the Immigration and Nationality Act to provide that an adopted alien who is less than 18 years of age may be considered a child under such Act if adopted with or after a sibling who is a child under such Act. (Dec. 7, 1999; 113 Stat. 1696)

H.R. 2889/P.L. 106–140

To amend the Central Utah Project Completion Act to provide for acquisition of water and water rights for Central Utah Project purposes, completion of Central Utah project facilities, and implementation of water conservation measures. (Dec. 7, 1999; 113 Stat. 1698)

H.R. 3257/P.L. 106–

41 State Flexibility Clarification Act (Dec. 7, 1999; 113 Stat. 1699)

H.J. Res. 65/P.L. 106–142

Commending the World War II veterans who fought in the Battle of the Bulge, and for other purposes. (Dec. 7, 1999; 113 Stat. 1701)

S. 28/P.L. 106–143

Four Corners Interpretive Center Act (Dec. 7, 1999; 113 Stat. 1703)

S. 416/P.L. 106–144

To direct the Secretary of Agriculture to convey to the city of Sisters, Oregon, a certain parcel of land for use in connection with a sewage treatment facility. (Dec. 7, 1999; 113 Stat. 1708)

Last List December 9, 1999

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4	(869–038–00003–2)	7.00	[5] Jan. 1, 1999
5 Parts:			
1–699	(869–038–00004–1)	37.00	Jan. 1, 1999
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1200–End, 6 (6 Reserved)	(869–038–00006–7)	44.00	Jan. 1, 1999
7 Parts:			
1–26	(869–038–00007–5)	25.00	Jan. 1, 1999
27–52	(869–038–00008–3)	32.00	Jan. 1, 1999
53–209	(869–038–00009–1)	20.00	Jan. 1, 1999
210–299	(869–038–00010–5)	47.00	Jan. 1, 1999
300–399	(869–038–00011–3)	25.00	Jan. 1, 1999
400–699	(869–038–00012–1)	37.00	Jan. 1, 1999
700–899	(869–038–00013–0)	32.00	Jan. 1, 1999
900–999	(869–038–00014–8)	41.00	Jan. 1, 1999
1000–1199	(869–038–00015–6)	46.00	Jan. 1, 1999
1200–1599	(869–038–00016–4)	34.00	Jan. 1, 1999
1600–1899	(869–038–00017–2)	55.00	Jan. 1, 1999
1900–1939	(869–038–00018–1)	19.00	Jan. 1, 1999
1940–1949	(869–038–00019–9)	34.00	Jan. 1, 1999
1950–1999	(869–038–00020–2)	41.00	Jan. 1, 1999
2000–End	(869–038–00021–1)	27.00	Jan. 1, 1999
8	(869–038–00022–9)	36.00	Jan. 1, 1999
9 Parts:			
1–199	(869–038–00023–7)	42.00	Jan. 1, 1999
200–End	(869–038–00024–5)	37.00	Jan. 1, 1999
10 Parts:			
1–50	(869–038–00025–3)	42.00	Jan. 1, 1999
51–199	(869–038–00026–1)	34.00	Jan. 1, 1999
200–499	(869–038–00027–0)	33.00	Jan. 1, 1999
500–End	(869–038–00028–8)	43.00	Jan. 1, 1999
11	(869–038–00029–6)	20.00	Jan. 1, 1999
12 Parts:			
1–199	(869–038–00030–0)	17.00	Jan. 1, 1999
200–219	(869–038–00031–8)	20.00	Jan. 1, 1999
220–299	(869–038–00032–6)	40.00	Jan. 1, 1999
300–499	(869–038–00033–4)	25.00	Jan. 1, 1999
500–599	(869–038–00034–2)	24.00	Jan. 1, 1999
600–End	(869–038–00035–1)	45.00	Jan. 1, 1999
13	(869–038–00036–9)	25.00	Jan. 1, 1999
14 Parts:			
1–59	(869–038–00037–7)	50.00	Jan. 1, 1999
60–139	(869–038–00038–5)	42.00	Jan. 1, 1999
140–199	(869–038–00039–3)	17.00	Jan. 1, 1999
200–1199	(869–038–00040–7)	28.00	Jan. 1, 1999
1200–End	(869–038–00041–5)	24.00	Jan. 1, 1999
15 Parts:			
0–299	(869–038–00042–3)	25.00	Jan. 1, 1999
300–799	(869–038–00043–1)	36.00	Jan. 1, 1999
800–End	(869–038–00044–0)	24.00	Jan. 1, 1999
16 Parts:			
0–999	(869–038–00045–8)	32.00	Jan. 1, 1999
1000–End	(869–038–00046–6)	37.00	Jan. 1, 1999
17 Parts:			
1–199	(869–038–00048–2)	29.00	Apr. 1, 1999
200–239	(869–038–00049–1)	34.00	Apr. 1, 1999
240–End	(869–038–00050–4)	44.00	Apr. 1, 1999
18 Parts:			
1–399	(869–038–00051–2)	48.00	Apr. 1, 1999
400–End	(869–038–00052–1)	14.00	Apr. 1, 1999
19 Parts:			
1–140	(869–038–00053–9)	37.00	Apr. 1, 1999
141–199	(869–038–00054–7)	36.00	Apr. 1, 1999
200–End	(869–038–00055–5)	18.00	Apr. 1, 1999
20 Parts:			
1–399	(869–038–00056–3)	30.00	Apr. 1, 1999
400–499	(869–038–00057–1)	51.00	Apr. 1, 1999
500–End	(869–038–00058–0)	44.00	[7] Apr. 1, 1999
21 Parts:			
1–99	(869–038–00059–8)	24.00	Apr. 1, 1999
100–169	(869–038–00060–1)	28.00	Apr. 1, 1999
170–199	(869–038–00061–0)	29.00	Apr. 1, 1999
200–299	(869–038–00062–8)	11.00	Apr. 1, 1999
300–499	(869–038–00063–6)	50.00	Apr. 1, 1999
500–599	(869–038–00064–4)	28.00	Apr. 1, 1999
600–799	(869–038–00065–2)	9.00	Apr. 1, 1999
800–1299	(869–038–00066–1)	35.00	Apr. 1, 1999
1300–End	(869–038–00067–9)	14.00	Apr. 1, 1999
22 Parts:			
1–299	(869–038–00068–7)	44.00	Apr. 1, 1999
300–End	(869–038–00069–5)	32.00	Apr. 1, 1999
23	(869–038–00070–9)	27.00	Apr. 1, 1999
24 Parts:			
0–199	(869–038–00071–7)	34.00	Apr. 1, 1999
200–499	(869–038–00072–5)	32.00	Apr. 1, 1999
500–699	(869–038–00073–3)	18.00	Apr. 1, 1999
700–1699	(869–038–00074–1)	40.00	Apr. 1, 1999
1700–End	(869–038–00075–0)	18.00	Apr. 1, 1999
25	(869–038–00076–8)	47.00	Apr. 1, 1999
26 Parts:			
§§ 1.0-1–1.60	(869–038–00077–6)	27.00	Apr. 1, 1999
§§ 1.61–1.169	(869–038–00078–4)	50.00	Apr. 1, 1999
§§ 1.170–1.300	(869–038–00079–2)	34.00	Apr. 1, 1999
§§ 1.301–1.400	(869–038–00080–6)	25.00	Apr. 1, 1999
§§ 1.401–1.440	(869–038–00081–4)	43.00	Apr. 1, 1999
§§ 1.441-1.500	(869-038-00082-2)	30.00	Apr. 1, 1999
§§ 1.501–1.640	(869–038–00083–1)	27.00	[7] Apr. 1, 1999
§§ 1.641–1.850	(869–038–00084–9)	35.00	Apr. 1, 1999
§§ 1.851–1.907	(869–038–00085–7)	40.00	Apr. 1, 1999
§§ 1.908–1.1000	(869–038–00086–5)	38.00	Apr. 1, 1999
§§ 1.1001–1.1400	(869–038–00087–3)	40.00	Apr. 1, 1999
§§ 1.1401–End	(869–038–00088–1)	55.00	Apr. 1, 1999
2–29	(869–038–00089–0)	39.00	Apr. 1, 1999
30–39	(869–038–00090–3)	28.00	Apr. 1, 1999
40–49	(869–038–00091–1)	17.00	Apr. 1, 1999
50–299	(869–038–00092–0)	21.00	Apr. 1, 1999
300–499	(869–038–00093–8)	37.00	Apr. 1, 1999
500–599	(869–038–00094–6)	11.00	Apr. 1, 1999
600–End	(869–038–00095–4)	11.00	Apr. 1, 1999
27 Parts:			
1–199	(869–038–00096–2)	53.00	Apr. 1, 1999

Title	Stock Number	Price	Revision Date
200–End	(869–038–00097–1)	17.00	Apr. 1, 1999
28 Parts:			
0-42	(869–038–00098–9)	39.00	July 1, 1999
43-end	(869-038-00099-7)	32.00	July 1, 1999
29 Parts:			
0–99	(869–038–00100–4)	28.00	July 1, 1999
100–499	(869–038–00101–2)	13.00	July 1, 1999
500–899	(869–038–00102–1)	40.00	[8] July 1, 1999
900–1899	(869–038–00103–9)	21.00	July 1, 1999
1900–1910 (§§ 1900 to 1910.999)	(869–038–00104–7)	46.00	July 1, 1999
1910 (§§ 1910.1000 to end)	(869–038–00105–5)	28.00	July 1, 1999
1911–1925	(869–038–00106–3)	18.00	July 1, 1999
1926	(869–038–00107–1)	30.00	July 1, 1999
1927–End	(869–038–00108–0)	43.00	July 1, 1999
30 Parts:			
1–199	(869–038–00109–8)	35.00	July 1, 1999
200–699	(869–038–00110–1)	30.00	July 1, 1999
700–End	(869–038–00111–0)	35.00	July 1, 1999
31 Parts:			
0–199	(869–038–00112–8)	21.00	July 1, 1999
200–End	(869–038–00113–6)	48.00	July 1, 1999
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–038–00114–4)	46.00	July 1, 1999
191–399	(869–038–00115–2)	55.00	July 1, 1999
400–629	(869–038–00116–1)	32.00	July 1, 1999
630–699	(869–038–00117–9)	23.00	July 1, 1999
700–799	(869–038–00118–7)	27.00	July 1, 1999
800–End	(869–038–00119–5)	27.00	July 1, 1999
33 Parts:			
1–124	(869–038–00120–9)	32.00	July 1, 1999
125–199	(869–038–00121–7)	41.00	July 1, 1999
200–End	(869–038–00122–5)	33.00	July 1, 1999
34 Parts:			
1–299	(869–038–00123–3)	28.00	July 1, 1999
300–399	(869–038–00124–1)	25.00	July 1, 1999
400–End	(869–038–00125–0)	46.00	July 1, 1999
35	(869–034–00126–2)	14.00	July 1, 1998
36 Parts			
1–199	(869–038–00127–6)	21.00	July 1, 1999
200–299	(869–038–00128–4)	23.00	July 1, 1999
300–End	(869–038–00129–2)	38.00	July 1, 1999
37	(869–038–00130–6)	29.00	July 1, 1999
38 Parts:			
0–17	(869–038–00131–4)	37.00	July 1, 1999
18–End	(869–038–00132–2)	41.00	July 1, 1999
39	(869–038–00133–1)	24.00	July 1, 1999
40 Parts:			
1–49	(869–038–00134–9)	33.00	July 1, 1999
50–51	(869–038–00135–7)	25.00	July 1, 1999
52 (52.01–52.1018)	(869–038–00136–5)	33.00	July 1, 1999
52 (52.1019–End)	(869–038–00137–3)	37.00	July 1, 1999
53–59	(869–038–00138–1)	19.00	July 1, 1999
60	(869–038–00139–0)	59.00	July 1, 1999
61–62	(869–038–00140–3)	19.00	July 1, 1999
63 (63.1–63.1119)	(869–038–00141–1)	58.00	July 1, 1999
63 (63.1200–End)	(869–038–00142–0)	36.00	July 1, 1999
64–71	(869–038–00143–8)	11.00	July 1, 1999
72–80	(869–038–00144–6)	41.00	July 1, 1999
81–85	(869–038–00145–4)	33.00	July 1, 1999
86	(869–038–00146–2)	59.00	July 1, 1999
87-135	(869–038–00146–1)	53.00	July 1, 1999
136–149	(869–038–00148–9)	40.00	July 1, 1999
150–189	(869–038–00149–7)	35.00	July 1, 1999
190–259	(869–038–00150–1)	23.00	July 1, 1999
260–265	(869–038–00151–9)	32.00	July 1, 1999
266–299	(869–038–00152–7)	33.00	July 1, 1999
300–399	(869–038–00153–5)	26.00	July 1, 1999
400–424	(869–038–00154–3)	34.00	July 1, 1999
425–699	(869–038–00155–1)	44.00	July 1, 1999
700–789	(869–038–00156–0)	42.00	July 1, 1999
790–End	(869–038–00157–8)	23.00	July 1, 1999
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–038–00158–6)	14.00	July 1, 1999
101	(869–038–00159–4)	39.00	July 1, 1999
102–200	(869–038–00160–8)	16.00	July 1, 1999
201–End	(869–038–00161–6)	15.00	July 1, 1999
42 Parts:			
1–399	(869–034–00161–1)	34.00	Oct. 1, 1998
400–429	(869–034–00162–9)	41.00	Oct. 1, 1998
430–End	(869–034–00163–7)	51.00	Oct. 1, 1998
43 Parts:			
1–999	(869–034–00164–5)	30.00	Oct. 1, 1998
1000–end	(869–034–00165–3)	48.00	Oct. 1, 1998
44	(869–034–00166–1)	48.00	Oct. 1, 1998
45 Parts:			
1–199	(869–038–00168–3)	33.00	Oct. 1, 1999
200–499	(869–034–00168–8)	14.00	Oct. 1, 1998
500–1199	(869–034–00169–6)	30.00	Oct. 1, 1998
1200–End	(869–034–00170–0)	39.00	Oct. 1, 1998
46 Parts:			
1–40	(869–034–00171–8)	26.00	Oct. 1, 1998
41–69	(869–034–00172–6)	21.00	Oct. 1, 1998
70–89	(869–034–00173–4)	8.00	Oct. 1, 1998
90–139	(869–034–00174–2)	26.00	Oct. 1, 1998
140–155	(869–034–00175–1)	14.00	Oct. 1, 1998
156–165	(869–034–00176–9)	19.00	Oct. 1, 1998
166–199	(869–034–00177–7)	25.00	Oct. 1, 1998
200–499	(869–034–00178–5)	22.00	Oct. 1, 1998
500–End	(869–034–00179–3)	16.00	Oct. 1, 1998
47 Parts:			
0–19	(869–034–00180–7)	36.00	Oct. 1, 1998
20–39	(869–034–00181–5)	27.00	Oct. 1, 1998
40–69	(869–034–00182–3)	24.00	Oct. 1, 1998
70–79	(869–034–00183–1)	37.00	Oct. 1, 1998
80–End	(869–034–00184–0)	40.00	Oct. 1, 1998
48 Chapters:			
1 (Parts 1–51)	(869–034–00185–8)	51.00	Oct. 1, 1998
1 (Parts 52–99)	(869–034–00186–6)	29.00	Oct. 1, 1998
2 (Parts 201–299)	(869–034–00187–4)	34.00	Oct. 1, 1998
3–6	(869–034–00188–2)	29.00	Oct. 1, 1998
7–14	(869–034–00189–1)	32.00	Oct. 1, 1998
15–28	(869–034–00190–4)	33.00	Oct. 1, 1998
29–End	(869–034–00191–2)	24.00	Oct. 1, 1998
49 Parts:			
1–99	(869–034–00192–1)	31.00	Oct. 1, 1998
100–185	(869–034–00193–9)	50.00	Oct. 1, 1998
186–199	(869–034–00194–7)	11.00	Oct. 1, 1998
200–399	(869–034–00195–5)	46.00	Oct. 1, 1998
400–999	(869–034–00196–3)	54.00	Oct. 1, 1998
1000–1199	(869–034–00197–1)	17.00	Oct. 1, 1998
1200–End	(869–034–00198–0)	13.00	Oct. 1, 1998
50 Parts:			
1–199	(869–034–00199–8)	42.00	Oct. 1, 1998
200–599	(869–034–00200–5)	22.00	Oct. 1, 1998

Title	Stock Number	Price	Revision Date
600–End	(869–034–00201–3)	33.00	Oct. 1, 1998
CFR Index and Findings Aids	(869–038–00047–4)	48.00	Jan. 1, 1999
Complete 1998 CFR set		951.00	1998
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1998
Individual copies		1.00	1998
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[5] No amendments to this volume were promulgated during the period January 1, 1998 through December 31, 1998. The CFR volume issued as of January 1, 1997 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 1998, through April 1, 1999. The CFR volume issued as of April 1, 1998, should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 1998, through July 1, 1999. The CFR volume issued as of July 1, 1998, should be retained.