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Electronic Bulletin Board

Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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

Rules and Regulations

Federal Register

Vol. 62, No. 114

Friday, June 13, 1997

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–7]

Modification of Class E Airspace; Manitowish, WI, Manitowish Waters Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Manitowish, WI. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 32 has been developed for Manitowish Waters Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 UTC, September 11, 1997.

FOR FURTHER INFORMATION CONTACT: Manuel A. Torres, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, March 17, 1997, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at Manitowish, WI (62 FR 12578). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies Class E airspace at Manitowish, WI, to accommodate aircraft executing the GPS Runway 32 SIAP at Manitowish Waters Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

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

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 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; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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

* * * * *

AGL WI E5 Manitowish, WI [Revised]

Manitowish Waters Airport, WI
(Lat. 46°07′19″ N, long. 89°52′56″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Manitowish Waters Airport and within 4 miles each side of the 141° bearing from the airport extending from the 7-mile radius to 9 miles southeast of the airport, excluding that airspace within the Minocqua-Woodruff, WI, Class E airspace.

* * * * *

Issued in Des Plaines, Illinois on May 21, 1997.

Maureen Woods,
Manager, Air Traffic Division.

[FR Doc. 97–15531 Filed 6–12–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–AEA–16]

Amendment to Class E5 Airspace; Utica, NY and Establishment of Class E5 Airspace; Rome, NY

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E5 airspace extending upward from 700 feet above the surface at

Oneida County Airport, Utica, NY, and establishes Class E5 airspace extending upward from 700 feet above the surface at Griffiss Airfield, Rome, NY. The intended effect of this action is to provide adequate controlled airspace for instrument flight rules (IFR) operations at Oneida County Airport and Griffiss Airfield.

EFFECTIVE DATE: 0901 UTC, September 11, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Frances Jordan, Airspace Specialist, Operations Branch, AEA–530, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On February 15, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by modifying Class E5 airspace at Utica, NY, and establishing Class E5 airspace at Rome, NY (61 FR 5962). This action would provide adequate Class E5 airspace for IFR operations at Oneida County Airport and Griffiss Airfield.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Class E5 airspace designations are published in paragraph 6005 of the FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class E5 airspace area at Utica, NY, and establishes Class E5 airspace at Rome, NY to accommodate IFR operations at Oneida County Airport and Griffiss Airfield. The modification includes the airspace extending upward from 700 feet above the surface within a 10.5-mile radius of the Oneida County Airport and extending along a corridor running 23 miles southeast to southwest of the airport. The establishment of Class E5 airspace extending upward from the surface within a 8.7-mile radius of the Griffiss Airfield and extending along a corridor northwest of the airport for 15 miles from the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal.

Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have 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).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E5 airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA NY AEA E5 Utica, NY [Revised]

Oneida County Airport, NY
(Lat. 43°08′42″ N., long. 75°23′02″ W.)

That airspace extending upward from 700 feet above the surface within a 10.5-mile radius of Oneida County Airport and within the 113° bearing from Oneida County Airport extending from the 10.5-mile radius of the Oneida County Airport to 23 miles southeast of the airport then clockwise on the 23 mile radius to the 203° bearing from the airport.

* * * * *

AEA NY AEA E5 Rome, NY [New]

Griffiss Airfield, NY
(Lat. 43°14′02″ N., long. 75°24′26″ W.)

That airspace extending upward from 700 feet above the surface within a 8.7-mile radius of Griffiss Airfield and within 5 miles each side of the 315° bearing from Griffiss Airfield extending from the 8.7-mile radius to 15 miles northwest of Griffiss Airfield excluding the portion that coincides with the Utica, NY Class E5 airspace area.

Issued in Jamaica, New York, on May 29, 1997.

John S. Walker,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97–15530 Filed 6–12–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 42

[Public Notice 2546]

Visas: Documentation of Immigrants Under the Immigration and Nationality Act; Validity of Immigrant Visas

AGENCY: Bureau of Consular Affairs, State.

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the final rule published on May 21, 1997 [62 FR 27693–27694]. The regulation implemented sec. 631(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, which extended the validity of an immigrant visa from four months to six months.

DATES: This rule is effective October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel, Chief, Legislation and Regulations Division, (202) 663–1203.

SUPPLEMENTARY INFORMATION: On May 21, 1997 the Department published Public Notice 2546 [62 FR 27693–27694]. The document contained an error in the amendatory language in the second column of page 27694. The amendatory language is corrected to read as follows: ''2. Section 42.72 is amended by revising the first sentence in paragraph (a), paragraph (e)(1), and the first three sentences of paragraph (e)(4) to read as follows:''

Stephen K. Fischel,

Acting Director, Office of Legislation, Regulations and Advisory Assistance Visa Office, Bureau of Consular Affairs.

[FR Doc. 97–15554 Filed 6–12–97; 8:45 am]

BILLING CODE 4710–06–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans prescribes interest assumptions for valuing benefits under terminating single-employer plans. This final rule amends the regulation to adopt interest assumptions for plans with valuation dates in July 1997.

EFFECTIVE DATE: July 1, 1997.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: The PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions for valuing plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974.

Among the actuarial assumptions prescribed in part 4044 are interest assumptions. These interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Two sets of interest assumptions are prescribed, one set for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. This amendment adds to appendix B to part 4044 the annuity and lump sum interest assumptions for valuing benefits in plans with valuation dates during July 1997.

For annuity benefits, the interest assumptions will be 6.30 percent for the first 25 years following the valuation date and 5.00 percent thereafter. The annuity interest assumptions represent a decrease (from those in effect for June 1997) of 0.10 percent for the first 25 years following the valuation date and are otherwise unchanged. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 5.25 percent for the period during which a benefit is in pay status, 4.50 percent during the seven-year period directly preceding the benefit's placement in pay status, and 4.00 percent during any other years preceding the benefit's placement in pay status. The lump sum interest assumptions are unchanged from those in effect for June 1997.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans with valuation dates during July 1997, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, a new entry is added to Table I, and Rate Set 45 is added to Table II, as set forth below. The introductory text of each table is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 4044—Interest Rates Used to Value Annuities and Lump Sums

TABLE I.—ANNUITY VALUATIONS

[This table sets forth, for each indicated calendar month, the interest rates (denoted by i_1, i_2, . . . , and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* * *	*		*		*	*
July 1997	.0630	1–25	.0500	>25	N/A	N/A

TABLE II.—LUMP SUM VALUATIONS

[In using this table: (1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply; (2) For benefits for which the deferral period is y years (where y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years, and thereafter the immediate annuity rate shall apply; (3) For benefits for which the deferral period is y years (where y is an integer and $n_1 < y—n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y \leq n_1$ years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply; (4) For benefits for which the deferral period is y years (where y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y—n_1—n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply.]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	
45	07–1–97	08–1–97	5.25	4.50	4.00	4.00	7	8

Issued in Washington, D.C., on this 6th day of June 1997.

John Seal,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 97–15458 Filed 6–12–97; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–97–027]

RIN 2115–AE46

Special Local Regulations; Deerfield Beach, Florida

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special temporary local regulations are being adopted for the Deerfield Super Boat Grand Prix. The event will be held on the Atlantic Ocean off Deerfield Beach, Florida, on July 20, 1997, from 12:30 p.m. until 4 p.m. Eastern Daylight Time (EDT). The regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: These regulations are effective between 11:30 a.m. and 4:30 p.m. EDT on July 20, 1997.

FOR FURTHER INFORMATION CONTACT: QMCS T.E. KJERULFF Coast Guard Group Miami, Florida at (305) 535–4448.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Super Boat International Productions Inc., is sponsoring a high speed power boat race with approximately thirty-five (35) race boats participating in the event, ranging in length from 24 to 50 feet. There will be approximately two hundred (200) spectator craft. The race will take place in the Atlantic Ocean 1,300 feet off the Deerfield Beach shore from Hillsboro Inlet to Boca Raton Inlet. The race boats will be competing at high speeds with numerous spectator craft in the area, creating an extra or unusual hazard in the navigable waterways.

In accordance with 5 U.S.C. § 553, a notice of proposed rulemaking has not been published for these regulations. Following normal rulemaking procedures would have been impracticable, as there was not sufficient time remaining to publish proposed rules in advance of the event, as the request for the regulations was received less that two months before the event.

Discussion of Regulations

These regulations create a regulated area on July 20, 1997, offshore of Deerfield Beach, Florida. The regulations will prohibit entry into the regulated area by unauthorized vessels during the duration of the Deerfield Super Boat Grand Prix. The regulations will also create an area for spectator craft to safely view the event.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Entry into the regulated area is prohibited for only 5.0 hours on the day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities. ‘‘Small entities’’ include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities as the regulations will be in effect for approximately five hours.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this action and has determined pursuant to section 2.B.2.e(34)(g) of Commandant Instruction M16475.1B, that this action is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist are available in the docket for inspection or copying.

List of Subjects in 33 CFR Part 100

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

Temporary Regulations

In consideration of the foregoing, the Coast Guard amends Part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46.

2. A temporary section 100.35T–07–027 is added to read as follows:

§ 100.35T–07–027 Special Local Regulations; Deerfield Beach, Fl

(a) *Regulated Area:*

(1) A regulated area is established from a line from 26°19′ 44″N, 080°03′54″W to 26°15′40″N, 080°, 04′17″W to the shore line. All coordinates referenced use Datum: NAD 83.

(2) A spectator area is established in the vicinity of the regulated area for spectator traffic and is defined by a line joining the following points, beginning from: 26°19′43″N, 080° 03′40″W; thence to, 26°15′46″N, 080° 04′03″W; thence to, 26°15′44″N, 080° 04′16″W; thence to, 26°19′40″N, 080° 03′54″W; and back to the starting point. All coordinates referenced use Datum: NAD 83.

(3) A buffer zone of 300 feet separates the race course and the spectator areas.

(b) *Special local regulations:*

(1) Entry into the regulated area by other than event participants is prohibited unless otherwise authorized by the Patrol Commander. At the completion of scheduled races and departure of participants from the regulated area, traffic may resume normal operations. At the discretion of the Patrol Commander, between scheduled racing events, traffic may be permitted to resume normal operations.

(2) A succession of not fewer than 5 short whistle or horn blasts from a patrol vessel will be the signal for any and all vessels to take immediate steps to avoid collision. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

(3) Spectators are required to maintain a safe distance from the race course at all times.

(c) *Effective date:* These regulations become effective on July 20, 1997 at 11:30 a.m. and terminate on 4:30 p.m. EDT that same day.

Dated: May 29, 1997.

J.W. Lockwood,

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

[FR Doc. 97–15540 Filed 6–12–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100 and 165

[CGD 97–031]

Safety Zones, Security Zones, and Special Local Regulations

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document provides required notice of substantive rules adopted by the Coast Guard and temporarily effective between January 1, 1997 and March 31, 1997, which were not published in the **Federal Register** . This quarterly notice lists temporary local regulations, security zones, and safety zones, which were of limited duration and for which timely publication in the **Federal Register** was not possible.

DATES: This notice lists temporary Coast Guard regulations that became effective and were terminated between January 1, 1997 and March 31, 1997, as well as several regulations which were not included in the previous quarterly list.

ADDRESSES: The complete text of these temporary regulations may be examined at, and is available on request, from Executive Secretary, Marine Safety Council (G–LRA), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Lieutenant Christopher S. Keane at (202) 267–6004 between the hours of 8 a.m. and 3 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety needs of the waters within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. Safety zones may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. Security zones limit access to vessels, ports, or waterfront facilities to prevent injury or damage. Special local regulations are issued to enhance the safety of participants and spectators at regattas and other marine events. Timely publication of these regulations in the **Federal Register** is often precluded when a regulation responds to an emergency, or when an event occurs without sufficient advance notice. However, the affected public is informed of these regulations through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the regulation. Because mariners are notified by Coast Guard officials on-scene prior to enforcement action, **Federal Register** notice is not required to place the special local regulation, security zone, or safety zone in effect. However, the Coast Guard , by law, must publish in the **Federal Register** notice of substantive rules adopted. To discharge this legal obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary special local regulations, security zones, and safety zones. Permanent regulations are not included in this list because they are published in their entirety in the **Federal Register**. Temporary regulations may also be published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. These safety zones, special local regulations and security zones have been exempted from review under E.O. 12866 because of their emergency nature, or limited scope and temporary effectiveness

The following regulations were placed in effect temporarily during the period January 1, 1997 and March 31, 1997, unless otherwise indicated.

Pamela M. Pelcovits,

Chief, Office of Regulations and Administrative Law.

QUARTERLY REPORT

District docket	Location	Type	Effective date
01–96–142	Portland, ME	Safety Zone	1/13/97
01–97–001	New York Harbor	Safety Zone	2/14/97
01–97–002	Hudson River, New York	Safety Zone	2/18/97
01–97–003	Boston, MA	Safety Zone	2/18/97
01–97–021	Jamestown, RI	Safety Zone	3/31/97
05–97–005	Delaware River	Safety Zone	1/24/97
05–97–006	James River, Newport News Channel	Safety Zone	1/27/97
05–97–008	James River, Newport News Channel	Safety Zone	2/13/97
05–97–014	Albemarle Sound, NC	Safety Zone	3/14/97
05–97–015	Chesapeake Bay, VA	Safety Zone	3/20/97
05–97–016	Delaware River	Safety Zone	3/20/97
09–97–001	Little Calumet River	Safety Zone	1/3/97
09–97–003	Illinois Waterway M. 221.7 to 223.3	Safety Zone	2/22/97
09–97–004	Fox River	Safety Zone	3/1/97
09–97–006	Little Calumet River	Safety Zone	3/21/97
09–97–007	Little Calumet River	Safety Zone	3/26/97
09–97–009	Little Calumet River	Safety Zone	3/29/97
13–97–001	Longview, WA	Security Zone	1/21/97
13–97–004	Portland, OR	Safety Zone	2/28/97

QUARTERLY REPORT

COTP docket	Location	Type	Effective date
Houston-Galveston 97–001	Houston, TX	Safety Zone	1/2/97
Houston-Galveston 97–002	Galveston, TX	Safety Zone	3/10/97
Houston-Galveston MSU 97–001	High Island, TX	Safety Zone	1/17/97
LA/Long Beach 97–001	Berth 174, Los Angeles 97–001	Safety Zone	1/15/97
Louisville 97–001	Hawesville, KY	Safety Zone	3/5/97
Louisville 97–002	Louisville, KY	Safety Zone	3/6/97
Miami 97–003	Saddlebunch Keys, FL	Safety Zone	2/8/97
Miami 97–011	Fort Lauderdale, FL	Safety Zone	3/17/97
Mobile 97–001	Mobile Convention Center	Safety Zone	2/22/97
Morgan City 97–001	Lower Atchafalya River, M. 128 to M. 129	Safety Zone	3/17/97
New Orleans 96–018	LWR Mississippi River, M. 83 to M. 95	Safety Zone	1/6/97
New Orleans 97–001	LWR Mississippi River, M. 94 to M. 96.6	Safety Zone	1/22/97
New Orleans 97–004	LWR Mississippi River, M. 94 to M. 95	Safety Zone	2/10/97
New Orleans 97–006	LWR Mississippi River, M. 94 to M. 95	Safety Zone	3/16/97
New Orleans 97–007	LWR Mississippi River, M. 127 to M. 129	Safety Zone	3/17/97
New Orleans 97–008	LWR Mississippi River, M. 229 to M. 236	Safety Zone	3/19/97
Prince William Sound 97–001	Prince William Sound, AK	Safety Zone	1/10/97
San Francisco Bay 97–001	Sacramento-San Joaquin Delta, CA	Safety Zone	1/6/97
Southeast Alaska 97–001	Sitka, AK	Safety Zone	3/11/97

[FR Doc. 97–15541 Filed 6–12–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP MIAMI 96–054]

RIN 2115–AA97

Safety Zone; Fort Lauderdale, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent moving safety zone around naval aircraft carriers transiting the waters of Port Everglades, Fort Lauderdale, Florida. These regulations are needed to protect all vessels and the public from the safety hazards associated with the arrival and departure of naval aircraft carriers making port calls. During arrival and departure, these types of vessels require the use of the center channel in Port Everglades for safe navigation and leave no room for other vessels to safely pass. Therefore, these regulations are necessary for the safety of life on the navigable waters.

EFFECTIVE DATE: These regulations are effective on July 14, 1997.

FOR FURTHER INFORMATION CONTACT: CDR R.M. Miles, Chief, Port Management and Response Department, USCG Marine Safety Office Miami at (305) 535–8700.

SUPPLEMENTARY INFORMATION:

Regulatory History

A Notice of Proposed Rulemaking was published in the Federal Register on March 7, 1997 (62 FR 10496). No comments were received during the comment period.

Discussion of Regulations

These regulations are needed to provide for the safety of life on navigable waters during the arrival and departure of naval aircraft carriers in Port Everglades, Fort Lauderdale, Florida. These moving safety zones are necessary because of the significant risks associated with naval aircraft carriers transiting the area due to their size, draft, and channel restrictions. Historically, the Coast Guard has established a moving safety zone each time naval vessels of this class have transited the waters of Port Everglades both to and from a port call. Given the recurring nature of these port calls, and the safety dangers associated with naval aircraft carriers, the Coast Guard is establishing a permanent moving safety zone around these vessels during their arrival and departure from Port Everglades, Fort Lauderdale, Florida.

The safety zone will be established in an area 700 yards forward, 500 yards astern and 350 yards on either side of naval aircraft carriers entering or departing Port Everglades. The safety zone will be established for a period of approximately one and one half hours during the arrival and departure of these vessels. The Coast Guard will assign a patrol and issue a Broadcast Notice to Mariners to advise mariners of the established safety zone in advance of the naval aircraft carrier's arrival and departure. This safety zone will be effective only during the time indicated in the Broadcast Notice to Mariners.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the limited duration of the moving safety zone, the extensive advisories that will be made to the affected maritime community and the minimal restrictions the regulations will place on vessel traffic. These regulations will be in effect for a total of approximately three hours per port call for these vessels.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601—612), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under Section 3 of the Small Business Act (15 U.S.C. 632).

The Coast Guard certifies under 5 U.S.C.605 (b) that this rule would not have a significant economic impact on a substantial number of small entities because of the short duration of the disruption to regular navigation.

Collection of Information

These regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3512).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that the rulemaking does not have sufficient Federalism implication to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal and has concluded under paragraph 2.B.2.e(34)(g) of Commandant Instruction M16475.1B (as revised by 59 FR 38654, July 29, 1994), that this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist is available in the docket for inspection or copying.

List of Subjects in 33 CFR Part 165

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

Final Regulations

In consideration of the foregoing, The Coast Guard amends Subpart C of Part 165 of Title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new section § 165.711 is added to read as follows:

§ 165.711 Safety Zone: Port Everglades, Fort Lauderdale, FL.

(a) *Regulated Area.* A moving safety zone is established in the following area:

(1) The waters around naval aircraft carriers entering Port Everglades in an area 700 yards forward, 500 yards astern and 350 yards on either side of each vessel, beginning at the Port Everglades Sea Buoy in approximate position 26°05.5′N, 80°04.8′W and continuing until the vessel is safely moored in approximate position 26°04.9′N, 80°06.9′W. All coordinates referenced use datum: NAD 83.

(2) The waters around naval aircraft carriers departing Port Everglades in an area 700 yards forward, 500 yards astern and 350 yards on either side of each vessel beginning at the Pier in approximate position 26°04.9′N, 80°06.9′W, and continuing until the stern passes the Port Everglades Sea Buoy, in approximate position 26°05.5′N, 80°04.8′W. All coordinates referenced use datum: NAD 83.

(b) *Regulations.*

(1) No person or vessel may enter, transit, or remain in the safety zone unless authorized by the Captain of the Port, Miami, Florida, or a Coast Guard commissioned, warrant, or petty officer designated by him.

(2) Vessels encountering emergencies which require transit through the moving safety zone should contact the Coast Guard patrol craft on VHF Channel 16. In the event of an emergency, the Coast Guard patrol craft may authorize a vessel to transit through the safety zone with a Coast Guard designated escort.

(3) All persons and vessels shall comply with the instructions of on-scene patrol personnel. On-scene patrol personnel include commissioned, warrant, or petty officers of the U.S. Coast Guard. Coast Guard Auxiliary and local or state officials may be present to inform vessel operators of this regulation and other applicable laws.

Dated: May 9, 1997.

D.F. Miller,

Captain, U.S. Coast Guard, Captain of the Port, Miami, FL.

[FR Doc. 97–15539 Filed 6–12–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AC61

National Capital Region Parks, Special Regulations

AGENCY: National Park Service, Interior.

ACTION: Final Rule and policy statement.

SUMMARY: The National Park Service (NPS) is revising existing regulations to effect two needed but unrelated changes to NPS regulations found at 36 CFR 7.96. One change deletes reference to the John F. Kennedy Center for the Performing Arts. The need for this

revision arose from Public Law 103–279 which removed the Kennedy Center from NPS jurisdiction. The other change revises existing regulations, currently found at 36 CFR 7.96(k)(2)(v) and (vi), governing the distribution of literature within two park areas administered in the National Capital Region. The need for these revisions arose from two court decisions addressing literature distribution in these areas.

DATES: This rule becomes effective on June 13, 1997.

FOR FURTHER INFORMATION CONTACT: Sandra Alley, Public Affairs Officer, National Capital Region, National Park Service, 1100 Ohio Drive, S.W., Washington, D.C. 20242. Telephone 202–205–1918. Richard G. Robbins, Assistant Solicitor, National Capital Region Parks, Office of the Solicitor, Department of the Interior, Washington, D.C. 20240. Telephone 202–208–4338.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to Public Law 103–279, the NPS no longer has operating responsibilities within the John F. Kennedy Center for the Performing Arts. Accordingly, the NPS finds it necessary to revise existing regulations, currently found at 36 CFR 7.96, to delete references to the Kennedy Center.

In a matter unrelated to the Kennedy Center, on May 22, 1992, the United States Court of Appeals for the District of Columbia Circuit affirmed an injunction which barred the NPS's enforcement of a portion of 36 CFR 7.96(k)(2)(vi). In this civil action, the court held that the NPS prohibition against the free distribution of literature on the Constitution Avenue and Henry Bacon Drive sidewalks adjacent to the Vietnam Veterans Memorial was an unconstitutional abridgement under the First Amendment. *Henderson* v. *Lujan*, 964 F.2d 1179 (D.C. Cir. 1992). It is necessary, therefore, to revise the regulation consistent with the court's opinion. While the free distribution of literature without the aid of stands and structures is now allowed on these sidewalks, the NPS reaffirms the continued need to prohibit demonstration, special event and sales activities in this area.

On December 15, 1989, the U.S. District Court for the District of Columbia issued an order dismissing a criminal action against a defendant charged with a violation of 36 CFR 7.96(k)(2)(v). This criminal action, regarding the NPS prohibition against the free distribution of literature on East Executive Avenue, was dismissed as an unconstitutional abridgment under the First Amendment. *United States* v. *Fennelly*, 726 F.Supp. 871 (D.D.C. 1989). It is necessary, therefore, to also revise this regulation consistent with the memorandum opinion dismissing the criminal action. While the free distribution of literature without the aid of stands or structures is allowed in this park area, the NPS reaffirms the continued need to prohibit demonstration, special event and sales activities in this area.

Administrative Procedure Act

In accordance with the Administrative Procedure Act (5 U.S.C. 553(b)(B)), the NPS is promulgating this rule under the ''good cause'' exception of the Act from general notice and comment rulemaking. As discussed above, the NPS believes this exception is warranted because of Public Law 103–279 and the two recent court decisions . This final rule will not impose any additional restrictions on the public and comments on this rule are deemed unnecessary. Based upon this discussion, the NPS finds pursuant to 5 U.S.C. 553(b)(B) that it would be contrary to the public interest to publish this rule through general notice and comment rulemaking.

The NPS also believes that publishing this final rule 30 days prior to the rule becoming effective would be counterproductive and unnecessary for the reasons discussed above. A 30-day delay in this instance would be unnecessary and contrary to the public interest. Therefore, under the ''good cause'' exception of the Administrative Procedure Act (5 U.S.C. 553(d)(3)), the NPS has determined that this final rulemaking is excepted from the 30-day delay in the effective date and will therefore become effective on the date published in the **Federal Register**.

Drafting Information

The following persons participated in the writing of this regulation: Richard G. Robbins and Randolph J. Myers, National Capital Parks, Office of the Solicitor, Department of the Interior, Washington, D.C.

Paperwork Reduction Act

This final rule does not contain collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

Compliance With Other Laws

This rule is not a significant rule requiring review by the Office of Management and Budget under Executive Order 12866. The Department of the Interior has determined that this rule will not have a significant economic effect on a small number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). The economic effects of this rulemaking are negligible in scope.

NPS has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rule will not impose a cost of $100 million or more in any given year on local, state or tribal governments or private entities.

NPS has determined that this rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it; or

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it; or

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental guidelines in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 7

District of Columbia, National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR Chapter I is amended as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

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

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. Section 7.96 is amended by removing paragraph (g)(3)(ii)(B) and redesignating paragraphs (g)(3)(ii)(C), (g)(3)(ii)(D) and (g)(3)(ii)(E) as (g)(3)(ii)(B), (g)(3)(ii)(C) and (g)(3)(ii)(D), respectively.

3. Section 7.96 is amended by removing the current diagram of the Kennedy Center found at the end of paragraph (g).

4. Section 7.96 is amended by revising paragraphs (k)(2)(iv), (k)(2)(v) and (k)(2)(vi) to read as follows:

§ 7.96 National Capital Area.

* * * * *

(k) * * *

(2) * * *

(iv) The interior of all park buildings, including, but not limited to, those portions of Ford's Theatre administered by the National Park Service.

(v) The White House Park area bounded on the north by H Street, NW; on the south by Constitution Avenue, NW; on the west by 17th Street, NW; and on the east by 15th Street, NW; except for Lafayette Park, the White House sidewalk (the south Pennsylvania Avenue, NW sidewalk between East and West Executive Avenues) and the Ellipse; *Provided, however,* that the free distribution of literature conducted without the aid of stands or structures, is permitted on East Executive Avenue.

(vi) Vietnam Veterans Memorial area extending to and bounded by the south curb of Constitution Avenue on the north, the east curb of Henry Bacon Drive on the west, the north side of the north Reflecting Pool walkway on the south and a line drawn perpendicular to Constitution Avenue two hundred (200) feet from the east tip of the memorial wall on the east (this is also a line extended from the east side of the western concrete border of the steps to the west of the center steps to the Federal Reserve Building extending to the Reflecting Pool walkway); *Provided, however,* that the free distribution of literature conducted without the aid of stands or structures, is permitted on the Constitution Avenue and Henry Bacon Drive sidewalks adjacent to the Vietnam Veterans Memorial.

* * * * *

Dated: June 3, 1997.

William Leary,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 97–15551 Filed 6–12–97; 8:45 am]

BILLING CODE 4310–70–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1258

RIN 3095–AA71

NARA Reproduction Fee Schedule

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: NARA is revising its schedule of fees for reproduction of records created by other Federal agencies and transferred to the custody of the Archivist of the United States; donated historical materials; Presidential records and Presidential historical materials transferred to the custody of the Archivist; and records filed with the Office of the **Federal Register**. The fees are being changed to reflect current costs of providing the reproductions. This rule affects members of the public and Federal agencies who order reproductions from NARA.

EFFECTIVE DATE: July 14, 1997.

FOR FURTHER INFORMATION CONTACT: Nancy Allard on (301)713–7360.

SUPPLEMENTARY INFORMATION: NARA published a proposed rule on March 31, 1997 (62 FR 15137) and a correction to that document on April 3, 1997 (62 FR 15867). No comments were received during the 60-day comment period. In the proposed rule, NARA announced its intention to make the new fees effective on July 1, 1997, and cited that date in the proposed § 1258.16. An effective date of July 1, 1997, would not provide 30 days advance notice to the public, given the agency's inability to publish the final rule before June 1, 1997. Therefore, NARA is modifying the effective date in § 1258.16 to provide the 30 days advance notice. No other changes have been made in this final rule.

This rule is not a significant regulatory action for purposes of Executive Order 12866 of September 30, 1993, and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small entities. This rule is not a major rule for purposes of Congressional review of regulations under 5 U.S.C. Chapter 8.

List of Subjects in 36 CFR Part 1258

Archives and records.

For the reasons set forth in the preamble, chapter XII of title 36, Code of Federal Regulations, is amended as follows:

PART 1258—FEES

1. The authority citation for part 1258 continues to read as follows:

Authority: 44 U.S.C. 2116(c).

2. Section 1258.2 is amended by revising paragraphs (c)(1)and (c)(3) through (c)(5), adding paragraph (c)(6)(v), and removing paragraph (c)(10) to read as follows:

§ 1258.2 Applicability.

* * * * *

(c) * * *

(1) National Archives Trust Fund Board publications, including microfilm publications. Prices are available from the Product Sales Section (NWPS), 700 Pennsylvania Ave., NW., Room G–9, Washington, DC 20408.

* * * * *

(3) Motion picture, sound recording, and video holdings of the National Archives and Presidential libraries. Information on the availability of and prices for reproduction of these materials are available from the Motion Picture, Sound, and Video Branch (NWDNM), 8601 Adelphi Rd., Room 3340, College Park, MD 20740–6001, or from the Presidential library which has such materials (see § 1253.3 of this chapter for addresses).

(4) Electronic records. Information on the availability of and prices for duplication are available from the Center for Electronic Records (NWRE), 8601 Adelphi Rd., Room 5320, College Park, MD 20740–6001, or from the Presidential library which has such materials (see § 1253.3 of this chapter for addresses).

(5) Still photography, including aerial film, and oversize maps and drawings. Information on the availability and prices of reproductions of records held in the Still Pictures Branch (NWDNS) and the Cartographic and Architectural Branch (NWDNC), both located at the National Archives at College Park facility, 8601 Adelphi Rd., College Park, MD 20740–6001, and in the Presidential libraries and regional records services facility (see §§ 1253.3 and 1253.7 of this chapter for addresses) should be obtained from the unit which has the original records.

(6) * * *

(v) Land entry records (order form NATF 84)—$10.

* * * * *

3. The introductory text of § 1258.4(f) is revised to read:

§ 1258.4 Exclusions.

* * * * *

(f) For records center records only:

* * * * *

4. Section 1258.10 is amended by revising paragraph (a) to read:

§ 1258.10 Mail orders.

(a) There is a minimum fee of $10 per order for reproductions which are sent by mail to the customer.

* * * * *

§ 1258.11. [Removed]

5. Section 1258.11 is removed.

6. Section 1258.12 is amended by revising paragraphs (a) through (f), removing paragraph (g), and redesignating paragraphs (h) and (i) as paragraphs (g) and (h), respectively, to read:

§ 1258.12 Fee schedule.

(a) *Certification:* $10.

(b) *Electrostatic copying:* (1) Paper-to-paper copies (up to and including 11 in. by 17 in.) made by the customer on a NARA self-service copier: $0.10 per copy.

(2) Paper-to-paper copies (up to and including 11 in. by 17 in.) made by NARA staff:

(i) At a Presidential library; at a regional records services facility; and, when ordered on a same-day ''cash and carry'' basis, at a Washington, DC, area facility: $0.50 per copy.

(ii) All other orders placed at a Washington, DC, area facility: $10 for the first 1–20 copies; $5 for each additional block of up to 20 copies.

(3) Oversized electrostatic copies (per linear foot): $2.50.

(4) Electrostatic copies (22 in. by 34 in.): $2.50.

(5) Microfilm or microfiche to paper copies made by the customer on a NARA self-service copier: $0.25.

(6) Microfilm or microfiche to paper copies made by NARA staff: $1.75.

(c) *Microfilm*. (1) Original negative microfilm (paper-to-microfilm): $10 for the first 1–15 images; $14 for each additional block of up to 20 pages.

(2) Direct duplicate copy of accessioned microfilm: $34.00 per roll.

(3) Positive copy of accessioned microfilm: $34.00 per roll.

(d) *Diazo microfiche duplication (per fiche):* $2.10.

(e) *Self-service video copying in the Motion Picture, Sound and Video Research Room:* (1) Initial 90-min use of video copying station with 120-minute videocassette: $20.

(2) Additional 90-minute use of video copying station with no videocassette: $14.

(3) Blank 120-minute VHS videocassette: $6.

(f) *Self-service Polaroid prints:* $9 per print.

* * * * *

7. Section 1258.16 is revised to read:

§ 1258.16 Effective date.

The fees in § 1258.12 are effective on July 14, 1997.

Dated: June 9, 1997.

John W. Carlin,

Archivist of the United States.

[FR Doc. 97–15575 Filed 6–12–97; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH104–2a; FRL–5840–8]

Approval and Promulgation of Implementation Plans; Ohio Ozone Maintenance Plan

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule; delay of the effective date.

SUMMARY: On May 14, 1997 USEPA published a direct final rule (62 FR 26396) approving, and an accompanying proposed rule (62 FR 26463) proposing to approve a revision submitted on July 9, 1996 and January 31, 1997, to the ozone maintenance plans for the Dayton-Springfield Area (Miami, Montgomery, Clark, and Greene Counties), Toledo Area (Lucas and Wood Counties), Canton area (Stark County), Ohio portion of the Youngstown-Warren-Sharon Area (Mahoning and Trumbell Counties), Columbus Area (Franklin, Delaware, and Licking Counties), Cleveland-Akron-Lorain Area (Ashtabula, Cuyahoga, Lake, Lorain, Medina, Summit, Portage, and Geauga Counties), Preble County, Jefferson County, Columbiana and Clinton Counties. The revision was based on a request from the State of Ohio to revise the federally approved maintenance plan for those areas to provide the state and the affected areas with greater flexibility in choosing the appropiate ozone contingency measures for each area in the event such a measure is needed. The USEPA is postponing the effective date of this rule for 60 days to allow for a 60 day extension of the public comment period. In the proposed rules section of this **Federal Register**, USEPA announces a 60 day extension of the public comment period on these maintenance plans.

DATES: The direct final rule published at 62 FR 26396 becomes effective September 12, 1997 unless substantive written adverse comments not previously addressed by the State or USEPA are received by August 12, 1997. If the effective date is further delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: J. Elmer Bortzer, Chief, Regulations Development Section, Air Programs Branch (AR–18), at the address below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 5, Regulation Development Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Paskevicz, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Telephone: (312) 886–6084.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Volatile organic compounds.

Dated: June 5, 1997.

David A. Ullrich,

Acting Regional Administrator.

Therefore the effective date of the amendment to 40 CFR part 52 which added § 52.1885(a)(5), published at 62 FR 26396, May 14, 1997, is delayed until September 12, 1997.

[FR Doc. 97–15416 Filed 6–12–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA–076–5022a; FRL–5841–5]

Approval and Promulgation of Air Quality Implementation Plans; Virginia: Determination of Attainment of Ozone Standard and Determination Regarding Applicability of Certain Requirements in the Richmond Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA has determined that the Richmond ozone nonattainment area has attained the National Ambient Air Quality Standard (NAAQS) for ozone. This determination is based upon three years of ambient air monitoring data for the years 1993–95 that demonstrate that the ozone NAAQS has been attained in this area. EPA has also determined that Richmond has continued to attain the standard to date. On the basis of this determination, EPA is also determining that certain reasonable further progress and attainment demonstration requirements, along with certain other related requirements, of Part D of Title I of the Clean Air Act are not applicable to this area as long as this area continues to attain the ozone NAAQS.

DATES: This final rule is effective July 28, 1997 unless within July 14, 1997, adverse or critical comments are received. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments may be mailed to David L. Arnold, Chief, Ozone/Carbon Monoxide, and Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency—Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Persons interested in examining these documents should schedule an appointment with the contact person (listed below) at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, Ozone/Carbon Monoxide and Mobile Sources Section (3AT21), U.S. Environmental Protection Agency—Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, or by telephone at: (215) 566–2179. Questions may also be sent via e-mail, to the following address: Cripps.Christopher@epamail.epa.gov (Please note that only written comments can be accepted for inclusion in the docket.)

SUPPLEMENTARY INFORMATION:

I. Background

Subpart 2 of Part D of Title I of the Clean Air Act contains various air quality planning and State Implementation Plan (SIP) submission requirements for ozone nonattainment areas. EPA considers it is reasonable to interpret provisions regarding reasonable further progress (RFP) and attainment demonstrations, along with certain other related provisions, so as not to require SIP submissions if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard (i.e., attainment of the NAAQS demonstrated with three consecutive years of complete, quality assured air quality monitoring data). As described below, EPA has previously interpreted the general provisions of subpart 1 of part D of Title I (sections 171 and 172) so as not to require the submission of SIP revisions concerning RFP, attainment demonstrations, or contingency measures. As explained in a memorandum dated May 10, 1995, from John S. Seitz, Director, Office of Air Quality Planning and Standards to the Regional Air Division Directors, entitled ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard'', EPA concludes that it is appropriate to interpret the more specific RFP, attainment demonstration and related provisions of subpart 2 in the same manner.

First, with respect to RFP, section 171(1) states that, for purposes of part D of Title I, RFP ''means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.'' Thus, whether dealing with the general RFP requirement of section 172(c)(2), or the more specific RFP requirements of subpart 2 for classified ozone nonattainment areas (such as the 15 percent plan requirement of section 182(b)(1)), the stated purpose of RFP is to ensure attainment by the applicable attainment date.[1] If an area has in fact attained the standard, the stated purpose of the RFP requirement will have already been fulfilled and EPA concludes that the area does not need to submit revisions providing for the further emission reductions described in the RFP provisions of section 182(b)(1).

EPA notes that it took this view with respect to the general RFP requirement of section 172(c)(2) in the General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13498 (April 16, 1992)), and it is now extending that interpretation to the specific provisions of subpart 2. In the General Preamble, EPA stated, in the context of a discussion of the requirements applicable to the evaluation of requests to redesignate nonattainment areas to attainment, that the ''requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the Commonwealth will make RFP towards attainment will, therefore, have no meaning at that point.'' (57 FR at 13564.)[2]

Second, with respect to the attainment demonstration requirements of section 182(b)(1), an analogous rationale leads to the same result. Section 182(b)(1) requires that the plan provide for ''such specific annual reductions in emissions * * * as necessary to attain the national primary ambient air quality standard by the attainment date applicable under this Act.'' As with the RFP requirements, if an area has in fact monitored attainment of the standard, EPA concludes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of certain section 172(c) requirements provided by EPA in the General Preamble to Title I, as EPA stated there that no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since ''attainment will have been reached.'' (57 FR at 13564; *see* also September 1992 Calcagni memorandum at page 6.) Upon attainment of the NAAQS, the focus of state planning efforts shifts to maintenance of the NAAQS and the development of a maintenance plan under section 175A.

Similar reasoning applies to the contingency measure requirements of section 172(c)(9). EPA has previously interpreted the contingency measure requirement of section 172(c)(9) as no longer being applicable once an area has attained the standard since those ''contingency measures are directed at ensuring RFP and attainment by the applicable date.'' (57 FR at 13564; *see also* September 1992 Calcagni memorandum at page 6.) Similarly, as the section 172(c)(9) contingency measures are linked with the RFP requirements of section 182(b)(1), the requirement no longer applies once an area has attained the standard.

EPA emphasizes that the lack of a requirement to submit the SIP revisions discussed above exists only for as long as an area designated nonattainment continues to attain the standard. If EPA subsequently determines that such an area has violated the NAAQS, the basis for the determination that the area need not make the pertinent SIP revisions would no longer exist. The EPA would notify the Commonwealth of that determination and would also provide notice to the public in the **Federal**

[1] EPA notes that paragraph (1) of subsection 182(b) is entitled ''Plan Provisions for Reasonable Further Progress'' and that subparagraph (B) of paragraph 182(c)(2) is entitled ''Reasonable Further Progress Demonstration,'' thereby making it clear that both the 15 percent plan requirement of section 182(b)(1) and the 3 percent per year requirement of section 182(c)(2) are specific varieties of RFP requirements.

[2] *See also* ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' from John Calcagni, Director, Air Quality Management Division, to Regional Air Division Directors, September 4, 1992, at page 6 (stating that the ''requirements for reasonable further progress * * * will not apply for redesignations because they only have meaning for areas not attaining the standard'') (hereinafter referred to as ''September 1992 Calcagni memorandum'').

Register. Such a determination would mean that the area would have to address the pertinent SIP requirements within a reasonable amount of time, which EPA would establish taking into account the individual circumstances surrounding the particular SIP submissions at issue. Thus, a determination that an area need not submit one of the SIP submittals amounts to no more than a suspension of the requirement for so long as the area continues to attain the standard.

The Commonwealth must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR Part 58, to verify the attainment status of the area. The air quality data relied upon to determine that the area is attaining the ozone standard must be consistent with 40 CFR Part 58 requirements and other relevant EPA guidance and recorded in EPA's Aerometric Information Retrieval System (AIRS).

The determinations that are being made by this action are not equivalent to the redesignation of the area to attainment. Attainment of the ozone NAAQS is only one of the criteria set forth in section 107(d)(3)(E) that must be satisfied for an area to be redesignated to attainment. To be redesignated the Commonwealth must submit and receive full approval of a redesignation request for the area that satisfies all of the criteria of that section, including the requirement of a demonstration that the improvement in the area's air quality is due to permanent and enforceable reductions, that the area has a fully-approved SIP meeting all of the applicable requirements under section 110 and Part D, and of a fully-approved maintenance plan. On July 26, 1996 the Commonwealth of Virginia submitted a redesignation request and maintenance plan for the Richmond area.

The redesignation request and maintenance plan is the subject of a separate rulemaking action.

Furthermore, the determinations of this action will not shield an area from future EPA action to require emissions reductions from sources in the area where there is evidence, such as photochemical grid modeling, showing that emissions from sources in the area contribute significantly to nonattainment in, or interfere with maintenance by, other nonattainment areas. EPA has authority under sections 110(a)(2)(A) and 110(a)(2)(D) to require such emission reductions as necessary and appropriate to deal with transport situations.

II. Analysis of Air Quality Data

EPA has reviewed the ambient air monitoring data for ozone (consistent with the requirements contained in 40 CFR Part 58 and recorded in AIRS) for the Richmond moderate ozone nonattainment area in the Commonwealth of Virginia from 1993 through the present time. On the basis of that review EPA has concluded that the area attained the ozone standard during the 1993–95 period and continues to attain the standard through the present time.

The current design value for the Richmond nonattainment area, computed using ozone monitoring data for 1994 through 1996, is 116 parts per billion (ppb). The average annual number of expected exceedances is 0.7 for that same time period. For the 1993 to 1995 time period, the average annual number of expected exceedances was 1.0, and the corresponding design value was 124 ppb. An area is considered in attainment of the standard if the average annual number of expected exceedances is less than or equal to 1.0. Thus, this areas is no longer recording violations of the air quality standard for ozone. A more detailed summary of the ozone monitoring data for the area is provided in the Technical Support Document (TSD) for this action. A copy of this TSD is available from the EPA Regional Office listed in the **ADDRESSES** section of this document.

EPA's review of this material indicates that the Richmond area attained the NAAQS for ozone based upon air quality monitoring data for 1993 to 1995 and has continued to attain the standard to date. EPA is making this determination regarding the applicability of certain requirements without prior proposal. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective July 28, 1997 unless, within 30 days of publication, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any and all parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on July 28, 1997.

Final Action

EPA has determined that the Richmond ozone nonattainment area has attained the ozone standard and continues to attain the standard at this time. As a consequence of this determination, the requirements of section 182(b)(1) concerning the submission of the 15 percent plan and ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures are no longer applicable to the area so long as the area does not violate the ozone standard.

EPA emphasizes that this determination will be contingent upon the continued monitoring and continued attainment and maintenance of the ozone NAAQS in the affected area. When and if a violation of the ozone NAAQS is monitored in the Richmond nonattainment areas (consistent with the requirements contained in 40 CFR Part 58 and recorded in AIRS), EPA will provide notice to the public in the **Federal Register**. Such a violation would mean that the area would thereafter have to address the requirements of section 182(b)(1) and section 172(c)(9) since the basis for the determination that they do not apply would no longer exist.

As a consequence of the determination that these areas have attained the NAAQS and that the RFP and attainment demonstration requirements of section 182(b)(1) do not presently apply, the sanctions and Federal Implementation Plan (FIP) clocks started by EPA on January 20, 1994, for failure to submit the RFP SIP required under section 182(b)(1) are hereby stopped since the deficiency for which the clocks were started no longer exists.

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

Administrative Requirements

I. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR

2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

II. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. Today's determination does not create any new requirements, but suspends the indicated requirements. Therefore, because this action does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected.

III. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more.

Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action does not create any new requirements, but suspends the indicated requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

IV. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

V. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 12, 1997. 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).)

The Administrator's decision to issue a determination that the Richmond area has attained the NAAQS for ozone and that certain reasonable further progress and attainment demonstration requirements, along with certain other related requirements, of Part D of Title I of the Clean Air Act are not applicable to this area as long as this area continues to attain the ozone NAAQS will be based on whether it meets the requirements of section 110(a)(2) (A)–(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone.

Dated: June 5, 1997.

W. Michael McCabe,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart VV—Virginia

2. Section 52.2428 is added to read as follows:

§ 52.2428 Control Strategy: Carbon monoxide and ozone.

Determination—EPA has determined that, as of July 28, 1997, the Richmond ozone nonattainment area, which consists of the counties of Charles City, Chesterfield, Hanover and Henrico, and of the cities of Richmond, Colonial Heights and Hopewell, has attained the ozone standard and that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) of the Clean Air Act do not apply to this area for so long as the Richmond ozone nonattainment area does not monitor any violations of the ozone standard. If a violation of the ozone NAAQS is monitored in the Richmond ozone nonattainment area, these determinations shall no longer apply.

[FR Doc. 97–15567 Filed 6–12–97; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–5831–9]

Final Rule Making Findings of Failure To Submit Required State Implementation Plan: Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action in making a finding, pursuant to sections 179(a)(1) and 110(k) of the Clean Air Act (CAA or Act), as amended in 1990 (Pub. L. No. 101–549, November 15, 1990), 42 U.S.C. 7509(a)(1) and 7410, for the state of Oregon. The EPA has determined that Oregon has failed to submit a state implementation plan (SIP) for particulate matter less than or equal to 10 microns (PM–10) as required under the provisions in the Act for the Medford-Ashland nonattainment area. This rule addresses the requirement under section 189(a)(2)(A) of the Act that each state shall submit the SIP required under section 189(a)(1) within one year of the date of the enactment of the Clean Air Act Amendments of 1990 (i.e., by November 15, 1991) for areas designated nonattainment for PM–10 under section 107(d)(4). Other provisions required under section 189(a)(1)(A) were due at a later date (i.e., provisions relating to new source review).

This action triggers the 18-month time clock for mandatory application of sanctions in the Medford-Ashland PM–10 nonattainment area under the Act. This action is consistent with the CAA mechanism for assuring SIP submission.

EFFECTIVE DATE: June 13, 1997.

ADDRESSES: Copies of the state's request and other information supporting this action are available for inspection during normal business hours at the following locations: EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101; EPA Oregon Operations Office, 811 SW Sixth Avenue, Third Floor, Portland, Oregon 97204; and the Oregon Department of Environmental Quality, 811 SW Sixth Avenue, Portland, Oregon 97204–1390.

FOR FURTHER INFORMATION CONTACT:
Rindy Ramos, EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–6510.

SUPPLEMENTARY INFORMATION:

I. Background

A. SIP Elements Due November 15, 1991

The area within the Medford-Ashland, Oregon, Air Quality Maintenance Area was designated nonattainment for PM–10 and classified as moderate under Sections 107(d)(4)(B) and 188(a) of the CAA, upon enactment of the Clean Air Act Amendments (CAAA) of 1990.[1] See 56 FR 56694 (November 6, 1991) and 40 CFR 81.338.

The air quality planning requirements for moderate PM–10 nonattainment areas are set out in Subparts 1 and 4 of Title I of the Act.[2] EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under Title I of the Act, including those state submittals containing moderate PM–10 nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). The General Preamble provides a detailed discussion of EPA's interpretation of the Title I requirements.

Those states containing initial moderate PM–10 nonattainment areas (those areas designated nonattainment under Section 107(d)(4)(B)) were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that Reasonably Available Control Measures (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of Reasonably Available Control Technology) shall be implemented no later than December 10, 1993;
2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;
3. Quantitative milestones which are to be achieved every three years and which demonstrate Reasonable Further Progress (RFP) toward attainment by December 31, 1994; and
4. Provisions to assure that the control requirements applicable to major stationary sources of PM–10 also apply to major stationary sources of PM–10 precursors except where the Administrator determines that such sources do not contribute significantly to PM–10 levels which exceed the NAAQS in the area. See Sections 172(c), 188, and 189 of the Act.

States with initial moderate PM–10 nonattainment areas were required to: (1) submit a permit program for the construction and operation of new and modified major stationary sources of PM–10 by June 30, 1992 (see Section 189(a)); and (2) submit contingency measures by November 15, 1993, which were to become effective without further action by the state or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM–10 NAAQS by the applicable statutory deadline (see Section 172(c)(9) and 57 FR 13543–13544). Oregon has made submittals in response to both of the above described requirements. EPA intends to address the submittal containing the new source review permit program in a separate action.

B. State Withdrawal of November 15, 1991, SIP

On November 15, 1991, to address the CAAA of 1990, Oregon submitted a PM–10 nonattainment area SIP for the Medford-Ashland PM–10 nonattainment area. EPA determined the submittal to be complete on April 10, 1992. However, because of various problems with the submittal that EPA and the state were working to resolve, EPA had, to date, not taken formal action on the nonattainment area attainment plan.

On January 6, 1997, EPA received a notification from the Oregon Department of Environmental Quality (ODEQ) that it was withdrawing the Medford-Ashland PM–10 SIP. The state requested that the attainment plan be withdrawn effective immediately.

As indicated in its January 6, 1997, letter, ODEQ intends to re-submit a revised attainment plan, a complete maintenance plan, and a request to redesignate the area to attainment by March 1998. EPA notes that significant improvement has been made in air quality in the Medford-Ashland PM–10 nonattainment area. Based on current air quality data, the area has attained the annual and 24-hour PM–10 NAAQS at the area's ambient monitoring sites. However, the area lacks a technical demonstration indicating attainment of the NAAQS throughout the airshed as required under the CAA.

C. Finding of Failure To Submit

The 1990 Amendments establish specific consequences if EPA finds that a state has failed to meet certain requirements of the CAA. Of particular relevance here is section 179(a)(1) of the CAA, the mandatory sanctions provision. Section 179(a) sets forth four findings that form the basis for application of a sanction. The first finding, that a state has failed to submit a plan or one or more elements of a plan required under the CAA, is the finding relevant to this rulemaking.

Due to the withdrawal by the state of the Medford-Ashland PM–10 attainment plan, the statutory requirement to submit such a plan for the area is no longer satisfied. Therefore, EPA finds that the state of Oregon has failed to make a SIP submission for the Medford-Ashland PM–10 nonattainment area as required pursuant to section 189(a)(2)(A) of the CAA.

If the state does not correct this deficiency, i.e., by submitting a complete plan as required by the Act, within 18 months of the effective date of today's rulemaking, pursuant to section 179(a) of the CAA and 40 CFR 52.31, the offset sanction identified in section 179(b) of the CAA will be applied in the Medford-Ashland PM–10 nonattainment area. If the state still has not made a complete submission 6 months after the offset sanction is imposed, then the highway funding sanction will apply in the affected area, in accordance with 40 CFR 52.31. In addition, section 110(c) of the Act provides that EPA promulgate a federal implementation plan (FIP) no later than two years after a finding under section 179(a) if prior to that time the EPA has not approved the submission correcting the deficiency.

The 18-month clock will stop and the sanctions will not take effect if, within 18 months after the date of the finding, EPA finds that the state has made a

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Pub. L. No. 101–549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended ("the Act"). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. Sections 7401, *et seq.*

[2] Subpart 1 contains provisions applicable to nonattainment areas generally, and Subpart 4 contains provisions specifically applicable to PM–10 nonattainment areas. At times, Subpart 1 and Subpart 4 overlap or may conflict. EPA has attempted to clarify the relationship among these provisions in the "General Preamble" and, as appropriate, in today's notice and supporting information.

complete submittal as to each of the SIP elements for which these findings are made. In addition, EPA will not promulgate a FIP if the state makes the required SIP submittal and EPA takes final action to approve the submittal within two years of EPA's finding.

II. Final Action

A. Rule

Today, EPA is making a finding of failure to submit an attainment plan for the Medford-Ashland, Oregon, PM–10 nonattainment area. Specifically, EPA is making a finding that Oregon has not submitted a plan satisfying the requirement under section 189(a)(2)(A) of the Act. This section requires that each state submit a plan that includes certain provisions required under section 189(a)(1) within one year of the date of enactment of the Clean Air Act Amendments of 1990 (i.e., by November 15, 1991) for areas designated nonattainment for PM–10 under section 107(d)(4). Other provisions required under section 189(a)(1)(A) were due at a later date (i.e., provisions relating to new source review). See section 189(a)(2)(A).

B. Effective Date Under the Administrative Procedures Act

The Administrative Procedures Act (APA) applies to this rulemaking action. Under the APA, 5 U.S.C. 553(d)(3), agency rulemaking may take effect sooner than 30 days after the date of publication in the **Federal Register** if the agency has good cause to mandate an earlier effective date. Today's action concerns a SIP submission that is already overdue. On February 11, 1997, EPA notified the state that EPA was considering the action it is taking today. Consequently, the state has been on notice for some time that today's action was pending. In addition, today's action simply starts a ''clock'' that will not result in sanctions against the state for 18 months, and that the state may ''turn off'' through the submission of a complete SIP submittal. These reasons support establishing an effective date that is earlier than 30 days after the date of publication. Therefore, today's action will be effective June 13, 1997.

C. Notice-and-Comment Under the Administrative Procedures Act

This rule is a final agency action, but is not subject to the notice-and-comment requirements of the APA, 5 U.S.C. 553(b). EPA believes that, because of the limited time provided to make findings of failure to submit and findings of incompleteness regarding SIP submissions or elements of SIP submission requirements, Congress did not intend such findings to be subject to notice-and-comment rulemaking. However, to the extent such findings are subject to notice-and-comment rulemaking, EPA invokes the good cause exception pursuant to the APA, 5 U.S.C. 553(b)(3)(B). Notice-and-comment are unnecessary because no EPA judgment is involved in making a nonsubstantive finding of failure to submit elements of SIP submissions required by the Clean Air Act. Furthermore, providing notice-and-comment would be impracticable because of the limited time provided under the statute for making such determinations. Finally, notice-and-comment would be contrary to the public interest because it would divert agency resources from the critical substantive review of complete SIPs. See 58 FR 51270, 51272, n.17 (Oct. 1, 1993); 59 FR 39832, 39853 (Aug. 4, 1994).

III. Administrative Requirements

A. Executive Order 12866

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

B. Unfunded Mandates

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

EPA has determined that today's action is not a Federal mandate. The various CAA provisions discussed in this rule require the state to submit SIPs. This rule merely provides a finding that the state did not meet those requirements. This rule does not, by itself, require any particular action by the state, local, or tribal government; or by the private sector.

For the same reasons, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities of any rule subject to the notice-and-comment rulemaking requirements. Because this action is exempt from such requirements as described above, it is not subject to the RFA.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. section 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), EPA submitted 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 General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 12, 1997. 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 CAA section 307(b)(2), 42 U.S.C. 7607(b)(2))

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter.

Dated: May 8, 1997.

Chuck Clarke,

Regional Administrator.

[FR Doc. 97–15566 Filed 6–12–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–5839–2]

RIN 2060–AH07

National Emission Standards for Hazardous Air Pollutants From Secondary Lead Smelting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule: Amendments to rule.

SUMMARY: This action amends the national emission standards for hazardous air pollutants (NESHAP) for new and existing secondary lead smelters. Changes to the NESHAP are being made to address comments received in petitions to reconsider sent to the EPA following promulgation of the final rule. These changes affect several aspects of the final rule including applicability of the THC limit for collocated blast and reverberatory furnaces, minimum baghouse standard operating procedure (SOP) requirements, and bag leak detection system specifications and requirements. Several minor changes are also being made to clarify the intent of the rule. The EPA is making these amendments as a direct final rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no significant adverse comments.

The EPA is also proposing these amendments in the Proposed Rules Section of this **Federal Register**. If no significant adverse comments are received in response to this direct final rule, no further action is contemplated in relation to the proposal. If the EPA receives significant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposal. Any parties interested in commenting on the amendments should do so at this time.

DATES: *Effective Date.* This action will be effective August 4, 1997 unless significant adverse comments on this action are received by July 14, 1997. If significant adverse comments are received, the EPA will withdraw this Direct Final rule and will publish timely notice of the withdrawal inthe **Federal Register,** and all public comments received will be addressed in a subsequent final rule.

Judicial Review. Under section 307(b)(1) of the Act, judicial review of a NESHAP is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under section 307(b)(2) of the Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

ADDRESSES: *Docket.* Docket No. A–92–43, containing information considered by the EPA in development of the promulgated standards, is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday except for Federal holidays, at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC–6102), 401 M Street, SW., Washington, DC 20460; telephone (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

Comments. Written comments should be submitted to: Docket A–92–43, U.S. EPA, Air & Radiation Docket & Information Center, 401 M. Street, S.W., Room 1500, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Cavender, Metals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone (919) 541–2364.

SUPPLEMENTARY INFORMATION:

The information presented in this preamble is organized as follows:

I. Background

The NESHAP for secondary lead smelting (40 CFR part 63, subpart X) was proposed in the **Federal Register** on June 9, 1994 (59 FR 29750). The EPA received 31 letters commenting on the proposed rule and proposed area source listing. After considering fully the comments received, the EPA promulgated this NESHAP in the **Federal Register** on June 23, 1995 (60 FR 32587).

The final rule establishes emission limits for lead, as a surrogate for all metallic Hazardous Air Pollutants (HAP), from smelting furnaces, refining kettles, agglomerating furnaces, dryers, and fugitive dust sources at secondary lead smelters. The final rule also establishes emission limits for total hydrocarbons (THC), as a surrogate for HAP organics, from smelting furnaces. Work practice standards (i.e., minimum hood face velocities, and building enclosures) were specified for the capture and control of process fugitive sources including furnace charging equipment and tapping locations, refining kettles, driers, and agglomerating furnace vents and taps. The final rule also requires smelters to develop site specific Standard Operating Procedures (SOP) manuals for fugitive dust control and baghouse operation and maintenance. Minimum SOP requirements were specified in the rule.

Following publication of the final rule, the EPA received three petitions for reconsideration pursuant to section 307(d)(7)(B) of the act from secondary lead smelter owners and operators, and the Association of Battery Recyclers, an industry trade association that represents the majority of the secondary lead smelters in the United States.

The petitioners had subsantive objections to several technical requirements in the final rule that were not included in the proposal. The EPA has determined that several of the objections contained in the petitions, though not dealing with critical parts of the rule, are properly founded and that the rule should be revised. The EPA extended the compliance and SOP submittal dates by six months, in order to allow affected sources time to address the changes being made in this action. The extension was published in the **Federal Register** on December 12, 1996 (60 FR 65334). The EPA is making further amendments in this document.

II. Summary

A. Summary of Promulgated Standards

The promulgated rule, as amended, establishes standards to limit HAP emissions from smelting furnaces, refining kettles, agglomerating furnaces, dryers, and fugitive dust sources at both major source and area source secondary lead smelters. The promulgated rule does not apply to primary lead smelters, lead refiners, or lead remelters.

1. Process Emission Sources

Owners and operators of all smelting furnace types must limit lead compound emissions, which is a surrogate for all metal HAP, to no more than 2.0 milligrams per dry standard cubic meter (mg/dscm; 0.00087 grains per dry standard cubic foot (gr/dscf)). Owners and operators must limit THC emissions, which is a surrogate for all organic HAP's, to varying levels depending on the smelting furnace type. No THC limits apply to reverberatory, rotary, and electric furnaces not collocated with blast furnaces.

Owners and operators of collocated blast furnaces and reverberatory furnaces must comply with a THC limit of 20 parts per million by volume (ppmv) as propane at 4 percent carbon dioxide (CO_2) when both furnaces are operating. Less stringent limits apply when the reverberatory furnace is not operating. When the reverberatory furnace is not operating, new blast furnaces collocated with reverberatory furnaces must comply with a THC limit of 70 ppmv, and existing blast furnaces must comply with a THC limit of 360 ppmv. For the purpose of this rule, a collocated blast furnace and reverberatory furnace is defined as operation at the same site of a reverberatory furnace and a blast furnace with the volumetric flow rate discharged from the reverberatory furnaces being at least equal to that discharged from the blast furnaces.

The THC standard for a collocated blast furnace and reverberatory furnace is based on commingling the high-volume, high-temperature (approximately 1000 °C) reverberatory exhaust with the low-volume, low-temperature (approximately 100 °C) blast furnace exhaust to incinerate the organic HAP in the blast furnace exhaust. Organics are further reduced in a typical collocated blast furnace and reverberatory configuration since the reverberatory furnace processes the majority of the broken battery materials while the blast furnace processes reverberatory slag and only small amounts of broken batteries.

Owners and operators of new blast furnaces not collocated with a reverberatory furnace (as defined above) must comply with a THC limit of 70 ppmv. Existing blast furnaces not collocated with a reverberatory furnace must comply with a THC limit of 360 ppmv. The THC emissions from each blast furnace charging chute at all smelters with blast furnaces shall not exceed 0.20 kilograms per hour (kg/hr; 0.44 pounds per hour (lb/hr)).

Table 2 in the attached regulatory text summarizes the emission limits for smelting furnace process sources.

2. Process Fugitive Emission Sources

Owners and operators must comply with either of two process fugitive emission control options. Each process fugitive emission source must be controlled either by an enclosure-type hood that is ventilated to a control device or must be fully enclosed within a total enclosure that is ventilated to a control device. Lead compound emissions, as a surrogate for all metal HAP's, from each hood or building control device are limited to 2.0 mg/dscm (0.00087 gr/dscf).

Refining kettle enclosure hoods must have a minimum air velocity into all hood openings (i.e., face velocity) of 75 meters per minute (m/min; 250 feet per minute (fpm)), and the enclosure hoods over drying kiln transition pieces must have a minimum face velocity of 110 m/min (350 fpm). All other process fugitive emission sources (charging points, lead and slag taps, and agglomerating furnaces) with an enclosure hood must have a minimum face velocity of 90 m/min (300 fpm). If a ventilated building is used to control process fugitive sources, then it must be ventilated at such a rate as to maintain a lower than ambient pressure within the building, ensuring that a in-draft will exist at all doors and other openings.

Table 3 in the attached regulatory text summarizes the requirements for process fugitive emission sources.

3. Fugitive Dust Sources

Fugitive dust emissions must be controlled by the measures specified in a standard operating procedures (SOP) manual. The SOP must be developed by the owner or operator of each smelter and submitted to the Administrator for approval. The SOP must describe the measures that will be used to control fugitive dust emissions from plant roadways; the battery breaking area; the furnace, refining, and casting areas; and the materials storage and handling areas. Acceptable control measures include either a total enclosure of the fugitive dust source and ventilation of the enclosure to a control device, or a combination of partial enclosures, wet suppression, and pavement cleaning. Lead compound emissions, as a surrogate for all metal HAP's, from enclosure control devices must be limited to 2.0 mg/dscm (0.00087 gr/dscf).

4. Compliance Dates

Compliance for existing sources must be achieved no later than December 23, 1997, or upon startup for new or reconstructed sources.

5. Compliance Test Methods

Compliance with the emission limits for lead compounds shall be determined according to EPA Reference Method 12 (40 CFR part 60, appendix A). EPA Reference Method 9 is not required for determining compliance with the emission limits for lead compounds. Compliance with the THC emission limits shall be determined according to EPA Reference Method 25A (40 CFR part 60, appendix A). Concentrations of THC shall be reported in ppmv, as propane, corrected to 4 percent CO_2 to correct for dilution. Sampling point locations shall be determined according to EPA Reference Method 1, and stack gas conditions shall be determined, as appropriate, according to EPA Reference Methods 2, 3, 3B, and 4 (40 CFR part 60, appendix A).

6. Monitoring Requirements

The rule requires an initial lead compound emission test for all subject control devices to demonstrate compliance with the lead compound emission standards. In addition, the rule requires annual compliance testing for devices controlling process and process fugitive emission sources. All owners and operators must also prepare SOP manuals for the systematic inspection and maintenance of all baghouses, and install and operate bag leak detection systems. Where required, a single bagleak detector may be used to monitor a common stack serving multiple baghouses. Each manual shall also include provisions for the diagnosis of problems and a corrective action plan. Plans for corrective action must prescribe procedures to be followed whenever an alarm is triggered.

Compliance with the THC emission standards (except that for blast furnace charging) will require monitoring either afterburner or incinerator temperature or THC concentration. The THC emission limit includes a carbon dioxide correction factor which accounts for dilution (e.g., combining non-process streams, and tempering air). As such, the THC monitor may be placed anywhere down stream of any organic HAP control devices (e.g., after the baghouse). Only an initial compliance test is required for blast furnace charging.

7. Notification Requirements

The owner or operator will be required to comply with the notification requirements in the General Provisions to part 63 (40 CFR part 60, subpart A). In addition, owners and operators will be required to submit the fugitive dust control SOP and the baghouse SOP to the Administrator for review and approval.

8. Recordkeeping and Reporting Requirements

Owners and operators will be required to comply with the recordkeeping and reporting requirements in the General Provisions to part 63 (40 CFR part 60, subpart A). In addition, the owners and operators will be required to maintain records demonstrating that they have implemented the requirements of the fugitive dust control SOP and the baghouse SOP, including records of all bag leak detection system alarms and corrective actions.

B. Summary of Changes Made Since Promulgation

The EPA has made several changes to the promulgated rule based on comments contained in the petitions for reconsideration. A summary of the changes is presented below. Additional discussion of the changes and the rationale for these changes is presented in section II–C of this preamble.

1. Definitions

Several definitions were revised or added to resolve issues and clarify the intent of the rule. The definition of a bag leak detection system was revised to specifically not exclude devices that operate on the principle of light transmittance. Bag leak detection systems still must meet the specifications outlined in § 63.548(e).

A definition of collocated blast furnace and reverberatory furnace was added. The new definition is based, in part, on the relative exhaust rate for the blast furnace compared to the reverberatory furnace. This definition was added in response to comments from two smelters where the blast furnace exhaust was substantially higher than the reverberatory furnace making commingling infeasible.

The definitions of secondary lead smelter and smelting were revised and a definition of lead alloy was added to clarify that solder reclamation operations are not subject to the rule.

The definitions of partial and total enclosure were revised to clarify the intent of the rule. A definition of a high efficiency particulate air (HEPA) filter was added for completeness.

2. Standards for Process Fugitive Sources

Section 63.544 was re-organized to clarify the intent of the rule due to comments received. Specifically, the section was revised to make it clear that a facility wishing to comply with the standard through the use of a total enclosure may still use local hooding within the total enclosure, and that a facility may choose to control some fugitive emission sources with total enclosures and others through enclosure hooding. These changes do not affect the requirements of the rule.

The minimum doorway air velocity requirement for total enclosures has been deleted. As revised, owners and operators choosing to control process fugitive emission sources through total enclosures are required to ventilate the building at a rate that would ensure in-draft at all doorways. This requirement would replace the requirement for maintaining an in-draft velocity of 250 meters per minute at all doorways.

3. Test Methods and Schedule

The test method for demonstrating compliance with the hood face velocity has been revised to address comments received in the petitions. The current procedure could be read to require facilities to test the hood face velocity with all access doors in the open position. One petitioner argued that this requirement would, in many instances, result in artificial operating conditions that would make compliance impossible for certain operators. The rule is being revised to clarify that facilities may demonstrate compliance with the access doors positioned consistent with normal operation.

The test method for demonstrating compliance with the doorway air velocity requirements has been revised to address comments received in the petitions. As revised, owners and operators are given two options for demonstrating that the enclosure is ventilated at a sufficient rate to ensure in-draft at all openings. Under the first option, a vane anemometer is placed in the center of each doorway to demonstrate that air is being drawn into the building. Alternatively, an owner or operator can elect to install a pressure gauge on the leeward wall of the enclosure and demonstrate that the building is under a negative pressure as compared to ambient pressure.

4. Monitoring Requirements

The minimum maintenance requirements specified in the rule have been revised to address comments received in the petitions. The frequency of several of the required inspections were lowered to reduce the burden placed on operators. In addition, the requirements were revised to allow for alternative means of inspection where appropriate (e.g., fan vibration analysis in lieu of visual inspection for wear).

The specifications and requirements for bag leak detection systems have been revised. The minimum detection capability of the bag leak system was increased to 10 milligram per actual cubic meter from 1 milligram per actual cubic meter.

The requirement that a facility perform a compliance test in order to adjust the settings on the bag leak detection system has been dropped. Facilities will be allowed to adjust the bag leak detector as provided in written EPA guidance or manufacturers written guidance in the event EPA guidance is not available. In addition, annual compliance tests have been instated.

The bag leak detection requirement for positive pressure baghouses has been changed. Positive pressure baghouses equipped with stacks now must meet the same bag leak detection system requirements as negative pressure baghouses. None of the affected secondary lead smelters currently operate any positive pressure baghouses without stacks, nor are any expected to install such systems. Therefore positive pressure baghouses without stacks are not addressed in the rule.

Facilities that have equipped their baghouses with HEPA filters as a secondary filter to control emissions escaping the baghouse primary filter are exempted from the bag leak detection requirements. However, the facility must monitor the pressure drop across the HEPA filter, and if the pressure drop falls outside of the limit(s) specified by the filter manufacturer, the owner must take appropriate corrective measures. Baghouses that are used to control emissions from total enclosures used to comply with the fugitive dust standards (§ 63.545) are also exempted from the bag leak detection requirements.

5. Notification Requirements

The submittal date for the fugitive dust control SOP and the SOP for baghouses has been extended by 30 days from June 23, 1997, to July 23, 1997. This extension is being made to allow owners and operators adequate time to incorporate the changes being made in this revision into their SOP manuals.

C. Summary of Environmental, Energy, Health, Cost, and Economic Impacts

The final standards, as amended, will reduce total nationwide emissions of both metal HAP's and organic HAP's from secondary lead smelters by 1,230 megagrams per year (Mg/yr) (1,356 tons/yr). These reductions include 53 Mg/yr (58 tons/yr) of metal HAP's and 1,176 Mg/yr (1,296 tons/yr) of organic HAP's. The organic HAP emission reduction estimate has been reduced since promulgation by 54 Mg/yr (60 tons/yr). This change is due to two facilities no longer meeting the definition of a facility with a collocated blast furnace and reverberatory furnace. The amendments made in today's action do not significantly change the cost and economic impacts of the final rule.

III. Public Participation

Following promulgation, the EPA received three petitions for reconsideration from representatives of secondary lead smelters (Docket ID Nos. IV–D–48, IV–D–49, and IV–D–50). The EPA met with the petitioners to discuss the comments contained in the petitions. Following the meeting, the petitioners provided the EPA with additional information to support the comments made in the petitions (Docket ID Nos. IV–D–51, and IV–D–52).

IV. Significant Public Comments and Responses

The EPA received three petitions to reconsider from owners and operators of secondary lead smelters and industry trade associations. Two of the three petitions contained multiple comments. A document that summarizes the comments and arguments advanced in the petitions, and the EPA responses, was prepared. The document, entitled ''Summary of Petition Comments on Promulgated Rule and EPA Responses, Secondary Lead Smelting NESHAP'', may be found in the docket (Docket ID No. V–B–2). It serves as the basis for the revisions that have been made to the standard since promulgation. This section contains a detailed discussion of the significant comments contained in the petitions and the EPA's responses. Significant comments and new information were received on four topics: the definition of collocated blast and reverberatory furnaces, test methods for determining hood face and doorway air velocities, minimum baghouse SOP requirements, and bag leak detection system specifications and requirements.

A. Definition of Collocated Blast Furnace and Reverberatory Furnaces

Comment: Two petitioners (Docket ID Nos. IV–D–49, and IV–D–50) requested reconsideration of the THC limit for collocated blast furnaces and reverberatory furnaces. One petitioner (Docket ID No. IV–D–49) indicated that their blast furnace was originally designed as a primary lead blast furnace, and as such, had an exhaust rate 10 times higher than typical secondary lead blast furnaces. The high blast furnace exhaust rate compared to their low reverberatory exhaust rate made commingling technically and economically infeasible. The petition supplied information to support the claim.

The second petitioner (Docket ID No. IV–D–50) pointed out that the term ''collocated'' was not defined, and argued that smelter configurations very dramatically. They identified one facility that would have difficulty meeting the requirements since they had two blast furnaces and only one reverberatory furnace. Upon request, the petitioner supplied the exhaust flowrates for the two blast furnaces (25,300 scfm, total) and the reverberatory furnace (8,800 scfm) (Docket ID No. IV–D–52).

Response: The EPA reviewed the requests and the additional information provided by the petitioners. The EPA evaluated the differences in furnace exhaust rates for facilities with blast and reverberatory furnaces (Docket ID No. II–B–36). Information on the exhaust rates was obtained for all eight of the existing facilities with both blast and reverberatory furnaces. On reviewing the information, two groupings of facilities were evident. Six of the facilities had blast furnace exhaust rates which were less than roughly half that of the reverberatory exhaust rate. In contrast, two facilities had blast furnace exhaust rates which are more than 150 percent of the reverberatory exhaust rate. These two facilities, Doe Run, Missouri; and Schuylkill, Louisiana, are the facilities represented in the petitions.

Commingling of the exhaust gases is the basis for the collocated blast furnace and reverberatory furnace THC emission limit. The principle of commingling the exhaust gases is based on a large hot (2000+ degree Fahrenheit) reverberatory furnace exhaust acting as the principle heat source to incinerate any organics in the smaller cooler (roughly 200 °F) blast furnace exhaust. Clearly this condition is not met at the two facilities represented in the petitions. As such, it is unlikely that these two facilities would be able to achieve the THC standard for collocated blast furnaces and reverberatory furnaces by commingling, nor is it likely that they could achieve the standard through the use of afterburners.

To correct this situation, the EPA is adding the following definition of collocated blast furnace and reverberatory furnace to the final rule:

> ''*Collocated blast furnace and reverberatory furnace* means operation at the same location of a blast furnace and a reverberatory furnace with the volumetric flow rate discharged from the blast furnace equal to or less than that discharged from the reverberatory furnace.''

Under this definition, the two facilities represented in the petition would not be classified as having a collocated blast furnace and reverberatory furnace. As such, their blast furnaces would be subject to the blast furnace THC limit of 360 ppmv as propane rather than the 20 ppmv limit for collocated furnaces.

B. Test Methods for Determining Hood Face and Doorway Air Velocities

Comment: One petitioner (Docket ID No. IV–D–50) objected to the requirements in the rule for demonstrating compliance with the hood face air velocity standard. Specifically, the petitioner objected to the requirement that all access doors to a hood be open when measuring hood face velocity. The petitioner noted that at least one smelter has a charging hood with two doors to allow charging from either direction, but only one is open at any one time. In addition, the petitioner pointed out that some of the doors are used solely for the purpose of allowing periodic access for maintenance and other necessary activities. The petitioner argues that the requirement may render compliance with the face velocity standard impossible for certain operators, and does so unnecessarily because it does not reflect normal operations.

Response: The intent of the requirements is to ensure that adequate capture velocities are maintained during normal operating conditions. The EPA did not intend to require compliance demonstrations during artificial ''worst case'' operating conditions. As such, the EPA is revising § 63.547(d) to clarify the rule's intent.

Each access door and opening open during normal operation shall be tested. When a given access door is being tested, all other access doors shall be in the position they would be in during normal operation.

Comment: Two petitioners commented on the requirements for demonstrating compliance with the doorway air velocity standard for total enclosures. One petitioner (Docket ID No. IV–D–50) noted that the requirement could be read to mean that all doors that might be open during normal operation be open simultaneously during testing, regardless of whether such conditions occur during normal operations. A second petitioner (Docket ID No. IV–D–48) also commented that the rule was ambiguous on where and how the compliance with the air velocity requirement is to be measured. The petitioner also noted concern about the acheivability of the 250 feet per minute air velocity requirement. Both petitioners noted that requirements on doorway air velocities were not contained in the proposed rule, and that the industry did not have an opportunity to comment on the requirements.

Response: The EPA's intent was to require adequate ventilation to ensure air flow into the building at all doorways during normal operation conditions. Upon further consideration, the EPA believes that the 250 foot per minute doorway velocity requirement is excessive for this purpose, and would result in undue burden to the industry. As such, the EPA is revising the requirement. As revised, a facility must ventilate the building to a rate that ensures air flow is into the building at all doorways that would be open during normal operation. Two alternative methods are provided for demonstrating compliance. Owners and operators can choose to demonstrate in-draft at each door using a vane anemometer, or may install a pressure gauge on the leeward wall to demonstrate that the building is maintained at a lower than ambient pressure.

C. Minimum Baghouse SOP Requirements

Comment: One petitioner (Docket ID No. IV–D–50) commented on the minimum requirements for the baghouse inspection and maintenance SOP. While agreeing that an appropriate inspection and maintenance program is critical to monitoring performance, they argued that the minimum requirements set forth by the rule were unrealistic and unnecessary in some cases. The petitioner indicated that the EPA underestimated the labor required to satisfy the minimum requirements. The petitioner also argued that frequent baghouse inspections would result in increased fugitive emissions (due to wear on door seals) and worker exposure.

Response: The EPA has reviewed the minimum requirements for the baghouse inspection and maintenance SOP, and the labor estimates provided by the petitioners. The labor estimates to complete the minimum inspection requirements are significantly higher than previously estimated. The EPA has revised § 63.548(c) to reflect a more realistic schedule. In addition, several of the requirements have been reworded to allow for alternatives to visual inspections where appropriate. The revised requirements, which still include continuous bag leak detection, will reduce the labor burden associated with baghouse inspections while still providing adequate protection of the environment.

D. Bag Leak Detection System Specifications and Requirements

Comment: Two petitioners (Docket ID No. IV–D–48, and IV–D–50) commented on the rules requirement that a compliance test be performed after any adjustments to the required bag leak detectors are made. One petitioner (Docket ID No. IV–D–48) stated that this requirement does not reflect the realities of normal operations and, as such, may cause unacceptable difficulties in practice. They further stated that all measurement instruments require calibration on a routine basis, with the calibration interval dependent upon the instrument's sensitivity and detection requirements. Without such sensitivity adjustments, the presence of drift may cause the system to operate improperly. The second petitioner (Docket ID No. IV–D–50) echoed the need for periodic adjustments to account for drift. They also commented that the requirement tying the adjustment to compliance testing ignores the actual operation of bag leak detectors. Because there is no set relationship between the particulate emissions, as measured by the unit, and lead emission levels, the bag leak detector is not a monitor of lead emissions. Rather, its purpose is to reveal bag leaks.

Response: Upon further consideration, the EPA agrees that periodic adjustment of the bag leak detector system may be necessary, and that adjustment of the bag leak detector should not be tied to compliance demonstrations. The intended use of the bag leak detector was as a process monitor, able to identify upset conditions in the baghouse operation. The EPA is concerned however, that unrestricted adjustment of the bag leak detector could result in improper use, possibly resulting in the alarm and sensitivity settings being set such that leaks or malfunctions could occur undetected. As such, the EPA has revised the bag leak system adjustment requirements to: (1) delink bag leak detector adjustment and compliance testing, (2) allow for routine minor adjustments to the detector system, (3) require owners and operators to identify in their baghouse SOP all routine adjustments expected, and (4) require that owners and operators perform a complete baghouse inspection to ensure proper operation of the baghouse prior to any significant adjustments to the sensitivity or range.

In addition, a requirement for annual compliance testing has been instated. Instating annual compliance testing should not result in a significant increase in compliance testing costs over those imposed in the promulgated rule. The EPA assumed that facilities would wish to adjust bag leak detection settings at least once a year, which as written, would have triggered compliance testing.

Comment: One petitioner (Docket ID No. IV–D–48) argued that the bag leak detection system detection capability requirement is too restrictive. Section 63.548(e)(1) requires that the bag detection system be able to detect emissions of particulate matter at 1.0 milligram per actual cubic meter or less. The petitioner argues that, since the bag leak detector system monitors PM rather than lead, the specification does not correlate to the emission limit in the rule. They also argue that the specification is unnecessary to ensure that a bag leak detection system is capable of detecting tears and/or leaks in baghouse bags. Furthermore, the petitioner noted concern that the specification is based on information provided by only one manufacturer of one type of bag leak detector.

Response: The EPA did not intend to tie the bag leak detector detection capability to the lead limit. The intent of the requirement was to set a minimum detection capability to ensure a minimum quality and capability of the detection systems to be used. Bag leak detection systems were being used at several secondary lead smelters. The detection capability was set based on what was believed to be the detection capability of the systems already being used at these smelters. Upon further review it was determined that the 1.0 milligram per actual cubic meter detection capability was actually the capability of the most sensitive bag leak detectors available, and was not representative of the bag leak detectors already in use at secondary lead smelters. The EPA is increasing the detection capability to 10 milligram per actual cubic meter which is more representative of the existing bag leak detectors, and still meets the EPA's purpose of ensuring systems capable of detecting baghouse upset conditions.

Comment: One petitioner (Docket ID No. IV–D–48) commented that some baghouses are equipped with HEPA filters. The petitioner believes that it is unnecessary and impractical to require bag leak detection systems for these units, and that requiring visual inspections of the HEPA units and review of operating readouts in accordance with an approved SOP is fully protective of human health and the environment.

Response: The EPA acknowledges that some baghouses are equipped with HEPA filters which act as a secondary filter, and that these secondary filters may provide improved protection from bag leaks. The EPA also agrees that the use of a bag leak detector on such a system would likely provide little if any additional protection over proper inspection and monitoring of operating parameters (such as pressure drop). As such, the EPA is adding § 63.548(g) to exempt baghouses equipped with secondary HEPA filters from the bag leak detection requirement and add alternative monitoring requirements for these systems.

Comment: One commenter (Docket ID No. IV–D–50) argued that the requirement for bag leak detectors on all baghouses for process, process fugitive, and fugitive emissions is excessive. They contend that there are applications, particularly baghouses used to control particulate from building ventilation, in which units will not function due to the nature of the particulate.

Response: Upon further review, the EPA agrees that bag leak detectors will provide little to no useful information on baghouses used to control fugitive dust emissions from building ventilation. This is due to the low inlet loadings associated with these systems. As such, the EPA is adding § 63.548(h) to exempt baghouses used to control fugitive dust emissions from the bag leak detection requirement. Owners and operators are still required to develop and adhere to a SOP for the operation and maintenance of these baghouses that meets the minimum requirements specified in § 63.548(c).

V. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docket system is intended to allow members of the public and affected industries to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the BID's and preambles to the proposed and promulgated standards, the contents of the docket will serve as the official record in case of judicial review (section 307(d)(7)(A) of the Act).

B. Executive Order 12866

The Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the E.O. 12866, (58 FR 51735, October 4, 1993). The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this amendment to the final rule is not a ''significant regulatory action'' under the terms of the Executive Order and is therefore not subject to OMB review.

C. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

This amendment reduces the costs of complying with the final rule, it will not increase expenditures by State, local, and tribal governments or the private sector. Therefore, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments.

D. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C 3501 *et seq.*, the EPA must consider the paperwork burden imposed by any information collection request in a proposed or final rule. This amendment to the rule will not impose any new information collection requirements.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (or RFA, Public Law 96–354, September 19, 1980) requires Federal agencies to give special consideration to the impact of regulation on small businesses. The RFA specifies that a regulatory flexibility analysis must be prepared if a screening analysis indicates a regulation will have a significant economic impact on a substantial number of small entities. EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. This amendment will not result in increased economic impacts to small entities, and will result in reduced impacts in all cases.

F. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA submitted 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 General Accounting Office prior to publication of the rule in today's **Federal Register**. This amendment is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements, Secondary lead smelters.

Dated: June 4, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

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

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

2. Part 63 subpart X is revised to read as follows:

Subpart X—National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting

Secs.

Subpart X—National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting

§ 63.541 Applicability.

(a) The provisions of this subpart apply to the following affected sources at all secondary lead smelters: blast, reverberatory, rotary, and electric smelting furnaces; refining kettles; agglomerating furnaces; dryers; process fugitive sources; and fugitive dust sources. The provisions of this subpart do not apply to primary lead smelters, lead refiners, or lead remelters.

(b) Table 1 of this subpart specifies the provisions of subpart A that apply and those that do not apply to owners and operators of secondary lead smelters subject to this subpart.

TABLE 1.—GENERAL PROVISIONS APPLICABILITY TO SUBPART X

Reference	Applies to subpart X	Comment
63.1	Yes.	
63.2	Yes.	
63.3	Yes.	
63.4	Yes.	
63.5	Yes.	
63.6 (a), (b), (c), (e), (f), (g), (i) and (j)	Yes.	
63.6 (d) and (h)	No	No opacity limits in rule.
63.7	Yes.	
63.8	Yes.	
63.9 (a), (b), (c), (d), (e), (g), (h)(1–3), (h)(5–6), and (j)	Yes.	
63.9 (f) and (h)(4)	No	No opacity or visible emission limits in subpart X.
63.10	Yes.	
63.11	No	Flares will not be used to comply with the emission limits.
63.12 to 63.15	Yes.	

§ 63.542 Definitions.

Terms used in this subpart are defined in the Act, in subpart A of this part, or in this section as follows:

Agglomerating furnace means a furnace used to melt into a solid mass flue dust that is collected from a baghouse.

Bag leak detection system means an instrument that is capable of monitoring particulate matter (dust) loadings in the exhaust of a baghouse in order to detect bag failures. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light scattering, transmittance or other effect to monitor relative particulate matter loadings.

Battery breaking area means the plant location at which lead-acid batteries are broken, crushed, or disassembled and separated into components.

Blast furnace means a smelting furnace consisting of a vertical cylinder atop a crucible, into which lead-bearing charge materials are introduced at the top of the furnace and combustion air is introduced through tuyeres at the bottom of the cylinder, and that uses coke as a fuel source and that is operated at such a temperature in the combustion zone (greater than 980 °C) that lead compounds are chemically reduced to elemental lead metal.

Blast furnace charging location means the physical opening through which raw materials are introduced into a blast furnace.

Collocated blast furnace and reverberatory furnace means operation at the same location of a blast furnace and a reverberatory furnace with the volumetric flow rate discharged from the blast furnace being at equal to or less than that discharged from the reverberatory furnace.

Dryer means a chamber that is heated and that is used to remove moisture from lead-bearing materials before they are charged to a smelting furnace.

Dryer transition piece means the junction between a dryer and the charge hopper or conveyor, or the junction between the dryer and the smelting furnace feed chute or hopper located at the ends of the dryer.

Electric furnace means a smelting furnace consisting of a vessel into which reverberatory furnace slag is introduced and that uses electrical energy to heat the reverberatory furnace slag to such a temperature (greater than 980 °C) that lead compounds are reduced to elemental lead metal.

Enclosure hood means a hood that covers a process fugitive emission source on the top and on all sides, with openings only for access to introduce or remove materials to or from the source and through which an induced flow of air is ventilated.

Fugitive dust source means a stationary source of hazardous air pollutant emissions at a secondary lead smelter that is not associated with a specific process or process fugitive vent or stack. Fugitive dust sources include, but are not limited to, roadways, storage piles, materials handling transfer points, materials transport areas, storage areas, process areas, and buildings.

Furnace and refining/casting area means any area of a secondary lead smelter in which:

(1) Smelting furnaces are located; or

(2) Refining operations occur; or

(3) Casting operations occur.

High efficiency particulate air (HEPA) filter means a filter that has been certified by the manufacturer to remove 99.97 percent of all particles 0.3 micrometers and larger.

Lead alloy means an alloy in which the predominant component is lead.

Materials storage and handling area means any area of a secondary lead smelter in which lead-bearing materials (including, but not limited to, broken battery components, reverberatory furnace slag, flue dust, and dross) are stored or handled between process steps including, but not limited to, areas in which materials are stored in piles, bins, or tubs, and areas in which material is prepared for charging to a smelting furnace. Materials storage and handling area does not include areas used exclusively for storage of blast furnace slag.

Partial enclosure means a structure comprised of walls or partitions on at least three sides or three-quarters of the perimeter surrounding stored materials or process equipment to prevent the entrainment of particulate matter into the air.

Pavement cleaning means the use of vacuum equipment, water sprays, or a combination thereof to remove dust or other accumulated material from the paved areas of a secondary lead smelter.

Plant roadway means any area of a secondary lead smelter that is subject to vehicle traffic, including traffic by fork lifts, front-end loaders, or vehicles carrying whole batteries or cast lead ingots. Excluded from this definition are employee and visitor parking areas, provided they are not subject to traffic by vehicles carrying lead-bearing materials.

Process fugitive emission source means a source of hazardous air pollutant emissions at a secondary lead smelter that is associated with lead smelting or refining, but is not the primary exhaust stream from a smelting furnace, and is not a fugitive dust source. Process fugitive sources include, but are not limited to, smelting furnace charging points, smelting furnace lead and slag taps, refining kettles, agglomerating furnaces, and drying kiln transition pieces.

Refining kettle means an open-top vessel that is constructed of cast iron or steel and is indirectly heated from below and contains molten lead for the purpose of refining and alloying the lead. Included are pot furnaces, receiving kettles, and holding kettles.

Reverberatory furnace means a refractory-lined furnace that uses one or more flames to heat the walls and roof of the furnace and lead-bearing scrap to such a temperature (greater than 980 °C) that lead compounds are chemically reduced to elemental lead metal.

Rotary furnace (also known as a rotary reverberatory furnace) means a furnace consisting of a refractory-lined chamber that rotates about a horizontal axis and that uses one or more flames to heat the walls of the furnace and lead-bearing scrap to such a temperature (greater than 980 °C) that lead compounds are chemically reduced to elemental lead metal.

Secondary lead smelter means any facility at which lead-bearing scrap material, primarily, but not limited to, lead-acid batteries, is recycled into elemental lead or lead alloys by smelting.

Smelting means the chemical reduction of lead compounds to elemental lead or lead alloys through processing in high-temperature (greater than 980 °C) furnaces including, but not limited to, blast furnaces, reverberatory furnaces, rotary furnaces, and electric furnaces.

Total enclosure means a roofed and walled structure with limited openings to allow access and egress for people and vehicles that meets the requirements of 40 CFR 265.1101(a)(1), (a)(2)(i), and (c)(1)(i).

Vehicle wash means a device for removing dust and other accumulated material from the wheels, body, and underside of a vehicle to prevent the inadvertent transfer of lead contaminated material to another area of a secondary lead smelter or to public roadways.

Wet suppression means the use of water, water combined with a chemical surfactant, or a chemical binding agent to prevent the entrainment of dust into the air from fugitive dust sources.

§ 63.543 Standards for process sources.

(a) No owner or operator of a secondary lead smelter shall discharge or cause to be discharged into the atmosphere from any existing, new, or reconstructed blast, reverberatory, rotary, or electric smelting furnace any gases that contain lead compounds in excess of 2.0 milligrams of lead per dry standard cubic meter (0.00087 grains of lead per dry standard cubic foot).

(b) [Reserved]

(c) No owner or operator of a secondary lead smelter with a collocated blast furnace and reverberatory furnace shall discharge or cause to be discharged into the atmosphere from any existing, new, or reconstructed blast furnace or reverberatory furnace any gases that contain total hydrocarbons in excess of 20 parts per million by volume, expressed as propane corrected to 4 percent carbon dioxide, except as allowed under Paragraphs (c)(1) and (c)(2) of this section.

(1) No owner or operator of a secondary lead smelter with a collocated blast furnace and reverberatory furnace shall discharge or cause to be discharged into the atmosphere from any existing blast furnace any gases that contain total hydrocarbons in excess of 360 parts per million by volume, expressed as propane corrected to 4 percent carbon dioxide, during periods when the reverberatory furnace is not operating.

(2) No owner or operator of a secondary lead smelter with a collocated blast furnace and reverberatory furnace shall discharge or cause to be discharged into the atmosphere from any blast furnace that commences construction or reconstruction after June 9, 1994, any gases that contain total hydrocarbons in excess of 70 parts per million by volume, expressed as propane corrected to 4 percent carbon dioxide, during periods when the reverberatory furnace is not operating.

(d) No owner or operator of a secondary lead smelter with only blast furnaces shall discharge or cause to be discharged into the atmosphere from any existing blast furnace any gases that contain total hydrocarbons in excess of 360 parts per million by volume, expressed as propane corrected to 4 percent carbon dioxide.

(e) No owner or operator of a secondary lead smelter with only blast furnaces shall discharge or cause to be discharged into the atmosphere from any blast furnace that commences construction or reconstruction after June 9, 1994, any gases that contain total hydrocarbons in excess of 70 parts per million by volume, expressed as propane corrected to 4 percent carbon dioxide.

(f) If the owner or operator of a blast furnace or collocated blast furnace and reverberatory furnace combines the blast furnace charging process fugitive emissions with the blast furnace process emissions and discharges them to the atmosphere through a common emission point, then compliance with the applicable total hydrocarbon concentration limit under paragraph (c) of this section shall be determined downstream from the point at which the two emission streams are combined.

(g) If the owner or operator of a blast furnace or a collocated blast furnace and reverberatory furnace does not combine the blast furnace charging process fugitive emissions with the blast furnace process emissions and discharges such emissions to the atmosphere through separate emission points, then the total hydrocarbon emission rate for the blast furnace process fugitive emissions shall not be greater than 0.20 kilograms per hour (0.44 pounds per hour).

(h) Except as provided in paragraph (i) of this section, following the initial test to demonstrate compliance with paragraph (a) of this section, the owner or operator of a secondary lead smelter shall conduct a compliance test for lead compounds on an annual basis (no later than 12 calendar months following the previous compliance test).

(i) If a compliance test demonstrates a source emitted lead compounds at 1.0 milligram of lead per dry standard cubic meter (0.00044 grains of lead per dry standard cubic foot) or less during the time of the compliance test, the owner or operator of a secondary lead smelter shall be allowed up to 24 calendar months from the previous compliance test to conduct the next annual compliance test for lead compounds.

(j) The standards for process sources are summarized in table 2.

TABLE 2.—SUMMARY OF STANDARDS FOR PROCESS SOURCES

Furnace configuration	Lead compounds (milligrams per dry standard cubic meter)	Total hydrocarbons	Citation
Collocated blast furnace and reverberatory furnace:			
When both furnaces operating	2.0	20 parts per million by volume[1]	§ 63.543(a),(c).
When reverberatory furnace not operating	2.0	360 parts per million by volume[1] (existing)	§ 63.543(a),(c)(1).
		70 parts per million by volume[1] (new)[2]	§ 63.543(a),(c)(2).
Blast	2.0	360 parts per million by volume[1] (existing)	§ 63.543(a),(d).
		70 parts per million by volume[1] (new)[2]	§ 63.543(e).
		0.20 kilograms per hour[3]	§ 63.543(g).
Reverberatory, rotary, and electric	2.0	Not applicable	§ 63.543(a).

[1] Total hydrocarbons emission limits are as propane at 4 percent carbon dioxide to correct for dilution, based on a 3-hour average.
[2] New sources include those furnaces that commence construction or reconstruction after June 9, 1994.
[3] Applicable to blast furnace charging process fugitive emissions that are not combined with the blast furnace process emissions prior to the point at which compliance with the total hydrocarbons concentration standard is determined.

§ 63.544 Standards for process fugitive sources.

(a) Each owner or operator of a secondary lead smelter shall control the process fugitive emission sources listed in paragraphs (a)(1) through (a)(6) of this section in accordance with the equipment and operational standards presented in paragraphs (b) and (c) of this section.

(1) Smelting furnace and dryer charging hoppers, chutes, and skip hoists;

(2) Smelting furnace lead taps, and molds during tapping;

(3) Smelting furnace slag taps, and molds during tapping;

(4) Refining kettles;

(5) Dryer transition pieces; and

(6) Agglomerating furnace product taps.

(b) Process fugitive emission sources shall be equipped with an enclosure hood meeting the requirements of paragraphs (b)(1), (b)(2), or (b)(3) of this section, or be located in a total enclosure subject to general ventilation that maintains the building at a lower than ambient pressure to ensure in-draft through any doorway opening.

(1) All process fugitive enclosure hoods except those specified for refining kettles and dryer transition pieces shall be ventilated to maintain a face velocity of at least 90 meters per minute (300 feet per minute) at all hood openings.

(2) Process fugitive enclosure hoods required for refining kettles in paragraph (a) of this section shall be ventilated to maintain a face velocity of at least 75 meters per minute (250 feet per minute).

(3) Process fugitive enclosure hoods required over dryer transition pieces in paragraph (a) of this section shall be ventilated to maintain a face velocity of at least 110 meters per minute (350 feet per minute).

(c) Ventilation air from all enclosures hoods and total enclosures shall be conveyed to a control device. Gases discharged to the atmosphere from these control devices shall not contain lead compounds in excess of 2.0 milligrams of lead per dry standard cubic meter (0.00087 grains per dry standard cubic foot).

(d) All dryer emission vents and agglomerating furnace emission vents shall be ventilated to a control device that shall not discharge to the atmosphere any gases that contain lead compounds in excess of 2.0 milligrams of lead per dry standard cubic meter (0.00087 grains per dry standard cubic foot).

(e) Except as provided in paragraph (f) of this section, following the date of the initial test to demonstrate compliance with paragraphs (c) and (d) of this section, the owner or operator of a secondary lead smelter shall conduct a compliance test for lead compounds on an annual basis (no later than 12 calendar months following the previous compliance test).

(f) If a compliance test demonstrates a source emitted lead compounds at 1.0 milligram of lead per dry standard cubic meter (0.00044 grains of lead per dry standard cubic foot) or less during the time of the compliance test, the owner or operator of a secondary lead smelter shall be allowed up to 24 calendar months from the previous compliance test to conduct the next annual compliance test for lead compounds.

(g) The standards for process fugitive sources are summarized in table 3.

TABLE 3.—SUMMARY OF STANDARDS FOR PROCESS FUGITIVE SOURCES

Fugitive emission source	Control device lead compound emission limit (milligrams per dry standard cubic meter)	Enclosed hood or doorway face velocity (meters/minute)	Citation
Control Option I			
Smelting furnace and dryer charging hoppers, chutes, and skip hoists	2.0	[1] 90	§ 63.544 (b), (c).
Smelting furnace lead taps and molds during tapping	2.0	[1] 90	§ 63.544 (b), (c).

TABLE 3.—SUMMARY OF STANDARDS FOR PROCESS FUGITIVE SOURCES—Continued

Fugitive emission source	Control device lead compound emission limit (milligrams per dry standard cubic meter)	Enclosed hood or doorway face velocity (meters/minute)	Citation
Smelting furnace slag taps and molds during tapping	2.0	[1] 90	§ 63.544 (b), (c).
Refining kettles	2.0	[1] 75	§ 63.544 (b), (c).
Dryer transition pieces	2.0	[1] 110	§ 63.544 (b), (c).
Agglomerating furnace process vents and product taps	2.0	[1] 90	§ 63.544 (b), (c).
Control Option II			
Enclosed building ventilated to a control device	2.0	....	§ 63.544 (b), (c).
Applicable to Both Control Options			
Dryer and agglomerating furnace emission vents	2.0	....	§ 63.544(d).

[1] Enclosure hood face velocity applicable to those process fugitive sources not located in an enclosed building ventilated to a control device.

§ 63.545 Standards for fugitive dust sources.

(a) Each owner or operator of a secondary lead smelter shall prepare and at all times operate according to a standard operating procedures manual that describes in detail the measures that will be put in place to control fugitive dust emission sources within the areas of the secondary lead smelter listed in paragraphs (a)(1) through (a)(5) of this section.

(1) Plant roadways;

(2) Battery breaking area;

(3) Furnace area;

(4) Refining and casting area; and

(5) Materials storage and handling area.

(b) The standard operating procedures manual shall be submitted to the Administrator or delegated authority for review and approval.

(c) The controls specified in the standard operating procedures manual shall at a minimum include the requirements of paragraphs (c)(1) through (c)(5) of this section.

(1) Plant roadways—paving of all areas subject to vehicle traffic and pavement cleaning twice per day of those areas, except on days when natural precipitation makes cleaning unnecessary or when sand or a similar material has been spread on plant roadways to provide traction on ice or snow.

(2) Battery breaking area—partial enclosure of storage piles, wet suppression applied to storage piles with sufficient frequency and quantity to prevent the formation of dust, and pavement cleaning twice per day; or total enclosure of the battery breaking area.

(3) Furnace area—partial enclosure and pavement cleaning twice per day; or total enclosure and ventilation of the enclosure to a control device.

(4) Refining and casting area—partial enclosure and pavement cleaning twice per day; or total enclosure and ventilation of the enclosure to a control device.

(5) Materials storage and handling area—partial enclosure of storage piles, wet suppression applied to storage piles with sufficient frequency and quantity to prevent the formation of dust, vehicle wash at each exit from the area, and paving of the area; or total enclosure of the area and ventilation of the enclosure to a control device, and a vehicle wash at each exit.

(d) The standard operating procedures manual shall require that daily records be maintained of all wet suppression, pavement cleaning, and vehicle washing activities performed to control fugitive dust emissions.

(e) No owner or operator of a secondary lead smelter shall discharge or cause to be discharged into the atmosphere from any building or enclosure ventilation system any gases that contain lead compounds in excess of 2.0 milligrams of lead per dry standard cubic meter (0.00087 grains of lead per dry standard cubic foot).

§ 63.546 Compliance dates.

(a) Each owner or operator of an existing secondary lead smelter shall achieve compliance with the requirements of this subpart no later than December 23, 1997.

(b) Each owner or operator of a secondary lead smelter that commences construction or reconstruction after June 9, 1994, shall achieve compliance with the requirements of this subpart by June 13, 1997 or upon startup of operations, whichever is later.

§ 63.547 Test methods.

(a) The following test methods in appendix A of part 60 listed in paragraphs (a)(1) through (a)(5) of this section shall be used to determine compliance with the emission standards for lead compounds under §§ 63.543(a), 63.544 (c), and (d), and 63.545(e):

(1) Method 1 shall be used to select the sampling port location and the number of traverse points.

(2) Method 2 shall be used to measure volumetric flow rate.

(3) Method 3 shall be used for gas analysis to determine the dry molecular weight of the stack gas.

(4) Method 4 shall be used to determine moisture content of the stack gas.

(5) Method 12 shall be used to determine compliance with the lead compound emission standards. The minimum sample volume shall be 0.85 dry standard cubic meters (30 dry standard cubic feet) and the minimum sampling time shall be 60 minutes for each run. Three runs shall be performed and the average of the three runs shall be used to determine compliance.

(b) The following test methods in appendix A of part 60 listed in paragraphs (b)(1) through (b)(5) of this section shall be used, as specified, to determine compliance with the emission standards for total hydrocarbons under § 63.543 (c), (d), (e), and (g):

(1) Method 1 shall be used to select the sampling port location to determine compliance under § 63.543(c), (d), (e), and (g).

(2) Method 2 shall be used to measure volumetric flow rate to determine compliance under § 63.543(g).

(3) The Single Point Integrated Sampling and Analytical Procedure of Method 3B shall be used to measure the carbon dioxide content of the stack gases to determine compliance under § 63.543 (c), (d), and (e).

(4) Method 4 shall be used to measure moisture content of the stack gases to determine compliance under § 63.543 (c), (d), (e), and (g).

(5) Method 25A shall be used to measure total hydrocarbon emissions to determine compliance under § 63.543 (c), (d), (e), and (g). The minimum sampling time shall be 1 hour for each run. A minimum of three runs shall be performed. A 1-hour average total hydrocarbon concentration shall be determined for each run and the average of the three 1-hour averages shall be used to determine compliance. The total hydrocarbon emissions concentrations for determining compliance under § 63.543(c), (d), and (e) shall be expressed as propane and shall be corrected to 4 percent carbon dioxide, as described in paragraph (c) of this section.

(c) For the purposes of determining compliance with the emission limits under § 63.543 (c), (d), and (e), the measured total hydrocarbon concentrations shall be corrected to 4 percent carbon dioxide as listed in paragraphs (c)(1) through (c)(2) of this section in the following manner:

(1) If the measured percent carbon dioxide is greater than 0.4 percent in each compliance test, the correction factor shall be determined by using equation (1).

$$F = \frac{4.0}{CO_2} \qquad (1)$$

where:

F = correction factor (no units)

CO_2 = percent carbon dioxide measured using Method 3B, where the measured carbon dioxide is greater than 0.4 percent.

(2) If the measured percent carbon dioxide is equal to or less than 0.4 percent, then a correction factor (F) of 10 shall be used.

(3) The corrected total hydrocarbon concentration shall be determined by multiplying the measured total hydrocarbon concentration by the correction factor (F) determined for each compliance test.

(d) Compliance with the face velocity requirements under § 63.544(b) for process fugitive enclosure hoods shall be determined by the following test methods in paragraphs (d)(1) or (d)(2) of this section.

(1) Owners and operators shall calculate face velocity using the procedures in paragraphs (d)(1)(i) through (d)(1)(iv) of this section.

(i) Method 1 shall be used to select the sampling port location in the duct leading from the process fugitive enclosure hood to the control device.

(ii) Method 2 shall be used to measure the volumetric flow rate in the duct from the process fugitive enclosure hood to the control device.

(iii) The face area of the hood shall be determined from measurement of the hood. If the hood has access doors, then face area shall be determined with the access doors in the position they are in during normal operating conditions.

(iv) Face velocity shall be determined by dividing the volumetric flow rate determined in paragraph (d)(1)(ii) of this section by the total face area for the hood determined in paragraph (d)(1)(iii) of this section.

(2) The face velocity shall be measured directly using the procedures in paragraphs (d)(2)(i) through (d)(2)(v) of this section.

(i) A propeller anemometer or equivalent device shall be used to measure hood face velocity.

(ii) The propeller of the anemometer shall be made of a material of uniform density and shall be properly balanced to optimize performance.

(iii) The measurement range of the anemometer shall extend to at least 300 meters per minute (1,000 feet per minute).

(iv) A known relationship shall exist between the anemometer signal output and air velocity, and the anemometer must be equipped with a suitable readout system.

(v) Hood face velocity shall be determined for each hood open during normal operation by placing the anemometer in the plane of the hood opening. Access doors shall be positioned consistent with normal operation.

(e) Owners and operators shall determine compliance with the doorway in-draft requirement for enclosed buildings in § 63.544(b) using the procedures in paragraphs (e)(1) or (e)(2) of this section.

(1)(i) Owners and operators shall use a propeller anemometer or equivalent device meeting the requirements of paragraphs (d)(2)(ii) through (d)(2)(iv) of this section.

(ii) Doorway in-draft shall be determined by placing the anemometer in the plane of the doorway opening near its center.

(iii) Doorway in-draft shall be demonstrated for each doorway that is open during normal operation with all remaining doorways in the position they are in during normal operation.

(2)(i) Owners and operators shall install a differential pressure gage on the leeward wall of the building to measure the pressure difference between the inside and outside of the building.

(ii) The pressure gage shall be certified by the manufacturer to be capable of measuring pressure differential in the range of 0.02 to 0.2 mm Hg.

(iii) Both the inside and outside taps shall be shielded to reduce the effects of wind.

(iv) Owners and operators shall demonstrate the inside of the building is maintained at a negative pressure as compared to the outside of the building of no less than 0.02 mm Hg when all doors are in the position they are in during normal operation.

§ 63.548 Monitoring requirements.

(a) Owners and operators of secondary lead smelters shall prepare, and at all times operate according to, a standard operating procedures manual that describes in detail procedures for inspection, maintenance, and bag leak detection and corrective action plans for all baghouses (fabric filters) that are used to control process, process fugitive, or fugitive dust emissions from any source subject to the lead emission standards in §§ 63.543, 63.544, and 63.545, including those used to control emissions from building ventilation. This provision shall not apply to process fugitive sources that are controlled by wet scrubbers.

(b) The standard operating procedures manual for baghouses required by paragraph (a) of this section shall be submitted to the Administrator or delegated authority for review and approval.

(c) The procedures specified in the standard operating procedures manual for inspections and routine maintenance shall, at a minimum, include the requirements of paragraphs (c)(1) through (c)(9) of this section.

(1) Daily monitoring of pressure drop across each baghouse cell.

(2) Weekly confirmation that dust is being removed from hoppers through visual inspection, or equivalent means of ensuring the proper functioning of removal mechanisms.

(3) Daily check of compressed air supply for pulse-jet baghouses.

(4) An appropriate methodology for monitoring cleaning cycles to ensure proper operation.

(5) Monthly check of bag cleaning mechanisms for proper functioning through visual inspection or equivalent means.

(6) Monthly check of bag tension on reverse air and shaker-type baghouses. Such checks are not required for shaker-type baghouses using self-tensioning (spring loaded) devices.

(7) Quarterly confirmation of the physical integrity of the baghouse through visual inspection of the baghouse interior for air leaks.

(8) Quarterly inspection of fans for wear, material buildup, and corrosion

through visual inspection, vibration detectors, or equivalent means.

(9) Except as provided in paragraphs (g) and (h) of this section, continuous operation of a bag leak detection system.

(d) The procedures specified in the standard operating procedures manual for maintenance shall, at a minimum, include a preventative maintenance schedule that is consistent with the baghouse manufacturer's instructions for routine and long-term maintenance.

(e) The bag leak detection system required by paragraph (a)(9) of this section, shall meet the specifications and requirements of paragraphs (e)(1) through (e)(8) of this section.

(1) The bag leak detection system must be certified by the manufacturer to be capable of detecting particulate matter emissions at concentrations of 10 milligram per actual cubic meter (0.0044 grains per actual cubic foot) or less.

(2) The bag leak detection system sensor must provide output of relative particulate matter loadings.

(3) The bag leak detection system must be equipped with an alarm system that will alarm when an increase in relative particulate loadings is detected over a preset level.

(4) The bag leak detection system shall be installed and operated in a manner consistent with available written guidance from the U.S. Environmental Protection Agency or, in the absence of such written guidance, the manufacturer's written specifications and recommendations for installation, operation, and adjustment of the system.

(5) The initial adjustment of the system shall, at a minimum, consist of establishing the baseline output by adjusting the sensitivity (range) and the averaging period of the device, and establishing the alarm set points and the alarm delay time.

(6) Following initial adjustment, the owner or operator shall not adjust the sensitivity or range, averaging period, alarm set points, or alarm delay time, except as detailed in the approved SOP required under paragraph (a) of this section. In no event shall the sensitivity be increased by more than 100 percent or decreased more than 50 percent over a 365 day period unless such adjustment follows a complete baghouse inspection which demonstrates the baghouse is in good operating condition.

(7) For negative pressure, induced air baghouses, and positive pressure baghouses that are discharged to the atmosphere through a stack, the bag leak detector must be installed downstream of the baghouse and upstream of any wet acid gas scrubber.

(8) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(f) The standard operating procedures manual required by paragraph (a) of this section shall include a corrective action plan that specifies the procedures to be followed in the case of a bag leak detection system alarm. The corrective action plan shall include, at a minimum, the procedures used to determine and record the time and cause of the alarm as well as the corrective actions taken to correct the control device malfunction or minimize emissions as specified in paragraphs (f)(1) and (f)(2) of this section.

(1) The procedures used to determine the cause of the alarm must be initiated within 30 minutes of the alarm.

(2) The cause of the alarm must be alleviated by taking the necessary corrective action(s) which may include, but not be limited to, paragraphs (f)(2)(i) through (f)(2)(vi) of this section.

(i) Inspecting the baghouse for air leaks, torn or broken filter elements, or any other malfunction that may cause an increase in emissions.

(ii) Sealing off defective bags or filter media.

(iii) Replacing defective bags or filter media, or otherwise repairing the control device.

(iv) Sealing off a defective baghouse compartment.

(v) Cleaning the bag leak detection system probe, or otherwise repairing the bag leak detection system.

(vi) Shutting down the process producing the particulate emissions.

(g) Baghouses equipped with HEPA filters as a secondary filter used to control process, process fugitive, or fugitive dust emissions from any source subject to the lead emission standards in § 63.543, 63.544, or 63.545 are exempt from the requirement in § 63.548(c)(9) of this section to be equipped with a bag leak detector. The owner or operator of an affected source that uses a HEPA filter shall monitor and record the pressure drop across the HEPA filter system daily. If the pressure drop is outside the limit(s) specified by the filter manufacturer, the owner or operator must take appropriate corrective measures, which may include but not be limited to those given in paragraphs (g)(1) through (g)(4) of this section.

(1) Inspecting the filter and filter housing for air leaks and torn or broken filters.

(2) Replacing defective filter media, or otherwise repairing the control device.

(3) Sealing off a defective control device by routing air to other control devices.

(4) Shutting down the process producing the particulate emissions.

(h) Baghouses that are used exclusively for the control of fugitive dust emissions from any source subject to the lead emissions standard in § 63.545 are exempt from the requirement in § 63.548(c)(9) of this section to be equipped with a bag leak detector.

(i) The owner or operator of a secondary lead smelter that uses a wet scrubber to control particulate matter and metal hazardous air pollutant emissions from a process fugitive source shall monitor and record the pressure drop and water flow rate of the wet scrubber during the initial test to demonstrate compliance with the lead emission limit under § 63.544(c) and (d). Thereafter, the owner or operator shall monitor and record the pressure drop and water flow rate at least once every hour and shall maintain the pressure drop and water flow rate no lower than 30 percent below the pressure drop and water flow rate measured during the initial compliance test.

(j) The owner or operator of a blast furnace or collocated blast furnace and reverberatory furnace subject to the total hydrocarbon standards in § 63.543 (c), (d), or (e), must comply with the requirements of either paragraph (j)(1) or (j)(2) of this section, to demonstrate continuous compliance with the total hydrocarbon emission standards.

(1) *Continuous Temperature Monitoring.* (i) The owner or operator of a blast furnace or a collocated blast furnace and reverberatory furnace subject to the total hydrocarbon emission standards in § 63.543 (c), (d), or (e) shall install, calibrate, maintain, and continuously operate a device to monitor and record the temperature of the afterburner or the combined blast furnace and reverberatory furnace exhaust streams consistent with the requirements for continuous monitoring systems in subpart A, General Provisions.

(ii) Prior to or in conjunction with the initial compliance test to determine compliance with § 63.543 (c), (d), or (e), the owner or operator shall conduct a performance evaluation for the temperature monitoring device according to § 63.8(e) of the General Provisions. The definitions, installation specifications, test procedures, and data reduction procedures for determining calibration drift, relative accuracy, and reporting described in Performance Specification 2, 40 CFR Part 60, Appendix B, Sections 2, 3, 5, 7, 8, 9, and

10 shall be used to conduct the evaluation. The temperature monitoring device shall meet the following performance and equipment specifications:

(A) The recorder response range must include zero and 1.5 times the average temperature identified in paragraph (j)(1)(iii) of this section.

(B) The monitoring system calibration drift shall not exceed 2 percent of 1.5 times the average temperature identified in paragraph (j)(1)(iii) of this section.

(C) The monitoring system relative accuracy shall not exceed 20 percent.

(D) The reference method shall be an National Institute of Standards and Technology calibrated reference thermocouple-potentiometer system or an alternate reference, subject to the approval of the Administrator.

(iii) The owner or operator of a blast furnace or a collocated blast furnace and reverberatory furnace subject to the total hydrocarbon emission standards shall monitor and record the temperature of the afterburner or the combined blast furnace and reverberatory furnace exhaust streams every 15 minutes during the total hydrocarbon compliance test and determine an arithmetic average for the recorded temperature measurements.

(iv) To remain in compliance with the standards for total hydrocarbons, the owner or operator must maintain an afterburner or combined exhaust temperature such that the average temperature in any 3-hour period does not fall more than 28 °C (50 °F) below the average established in paragraph (j)(1)(iii) of this section. An average temperature in any 3-hour period that falls more than 28 °C (50 °F) below the average established in paragraph (j)(1)(iii) of this section, shall constitute a violation of the applicable emission standard for total hydrocarbons under § 63.543 (c), (d), or (e).

(2) *Continuous Monitoring of Total Hydrocarbon Emissions.* (i) The owner or operator of a secondary lead smelter shall install, operate, and maintain a total hydrocarbon continuous monitoring system and comply with all of the requirements for continuous monitoring systems found in subpart A, General Provisions.

(ii) Prior to or in conjunction with the initial compliance test to determine compliance with § 63.543 (c), (d), or (e), the owner or operator shall conduct a performance evaluation for the total hydrocarbon continuous monitoring system according to § 63.8(e) of the General Provisions. The monitor shall meet the performance specifications of Performance Specification 8, 40 CFR Part 60, Appendix B.

(iii) Allowing the 3-hour average total hydrocarbon concentration to exceed the applicable total hydrocarbon emission limit under § 63.543 shall constitute a violation of the applicable emission standard for total hydrocarbons under § 63.543 (c), (d), or (e).

§ 63.549 Notification requirements.

(a) The owner or operator of a secondary lead smelter shall comply with all of the notification requirements of § 63.9 of subpart A, General Provisions.

(b) The owner or operator of a secondary lead smelter shall submit the fugitive dust control standard operating procedures manual required under § 63.545(a) and the standard operating procedures manual for baghouses required under § 63.548(a) to the Administrator or delegated authority along with a notification that the smelter is seeking review and approval of these plans and procedures. Owners or operators of existing secondary lead smelters shall submit this notification no later than July 23, 1997. The owner or operator of a secondary lead smelter that commences construction or reconstruction after June 9, 1994, shall submit this notification no later than 180 days before startup of the constructed or reconstructed secondary lead smelter, but no sooner than June 13, 1997. An affected source that has received a construction permit from the Administrator or delegated authority on or before June 23, 1995, shall submit this notification no later than July 23, 1997.

§ 63.550 Recordkeeping and reporting requirements.

(a) The owner or operator of a secondary lead smelter shall comply with all of the recordkeeping requirements under § 63.10 of the General Provisions. In addition, each owner or operator of a secondary lead smelter shall maintain for a period of 5 years, records of the information listed in paragraphs (a)(1) through (a)(6) of this section.

(1) An identification of the date and time of all bag leak detection system alarms, their cause, and an explanation of the corrective actions taken.

(2) If an owner or operator chooses to demonstrate continuous compliance with the total hydrocarbon emission standards under § 63.543 (c), (d), or (e) by employing the method allowed in § 63.548(j)(1), the records shall include the output from the continuous temperature monitor, an identification of periods when the 3-hour average temperature fell below the minimum established under § 63.548(j)(1), and an explanation of the corrective actions taken.

(3) If an owner or operator chooses to demonstrate continuous compliance with the total hydrocarbon emission standard under § 63.543 (c), (d), or (e) by employing the method allowed in § 63.548(j)(2), the records shall include the output from the total hydrocarbon continuous monitoring system, an identification of the periods when the 3-hour average total hydrocarbon concentration exceeded the applicable standard and an explanation of the corrective actions taken.

(4) Any recordkeeping required as part of the practices described in the standard operating procedures manual required under § 63.545(a) for the control of fugitive dust emissions.

(5) Any recordkeeping required as part of the practices described in the standard operating procedures manual for baghouses required under § 63.548(a).

(6) Records of the pressure drop and water flow rate for wet scrubbers used to control metal hazardous air pollutant emissions from process fugitive sources.

(b) The owner or operator of a secondary lead smelter shall comply with all of the reporting requirements under § 63.10 of the General Provisions. The submittal of reports shall be no less frequent than specified under § 63.10(e)(3) of the General Provisions. Once a source reports a violation of the standard or excess emissions, the source shall follow the reporting format required under § 63.10(e)(3) until a request to reduce reporting frequency is approved.

(c) In addition to the information required under § 63.10 of the General Provisions, reports required under paragraph (b) of this section shall include the information specified in paragraphs (c)(1) through (c)(6) of this section.

(1) The reports shall include records of all alarms from the bag leak detection system specified in § 63.548(e).

(2) The reports shall include a description of the procedures taken following each bag leak detection system alarm pursuant to § 63.548(f) (1) and (2).

(3) The reports shall include the information specified in either paragraph (c)(3)(i) or (c)(3)(ii) of this section, consistent with the monitoring option selected under § 63.548(h).

(i) A record of the temperature monitor output, in 3-hour block averages, for those periods when the temperature monitored pursuant to § 63.548(j)(1) fell below the level established in § 63.548(j)(1).

(ii) A record of the total hydrocarbon concentration, in 3-hour block averages, for those periods when the total hydrocarbon concentration being monitored pursuant to § 63.548(j)(2) exceeds the relevant limits established in § 63.543 (c), (d), and (e).

(4) The reports shall contain a summary of the records maintained as part of the practices described in the standard operating procedures manual for baghouses required under § 63.548(a), including an explanation of the periods when the procedures were not followed and the corrective actions taken.

(5) The reports shall contain an identification of the periods when the pressure drop and water flow rate of wet scrubbers used to control process fugitive sources dropped below the levels established in § 63.548(i), and an explanation of the corrective actions taken.

(6) The reports shall contain a summary of the fugitive dust control measures performed during the required reporting period, including an explanation of the periods when the procedures outlined in the standard operating procedures manual pursuant to § 63.545(a) were not followed and the corrective actions taken. The reports shall not contain copies of the daily records required to demonstrate compliance with the requirements of the standard operating procedures manuals required under §§ 63.545(a) and 63.548(a).

[FR Doc. 97–15570 Filed 6–12–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 157

[OPP–250123; FRL–5720–5]

Ant or Roach Insecticide Bait Stations; Exemption From Adult Portion of Child-Resistant Testing Specifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Rule related notice.

SUMMARY: This document grants a 5–year exemption from the senior-adult test and younger-adult test effectiveness specifications, described in 16 CFR 1700.15(b)(2) (Ease of adult opening), for prefilled, nonrefillable ant or roach insecticide bait stations not designed or intended to be opened or activated in a manner that exposes the contents to human contact. Products qualifying for this exemption must still fully comply with all other child-resistant packaging (CRP) effectiveness, compatibility, and durability standards, as well as all other requirements of 40 CFR part 157. CRP certification for products relying on this exemption must specify that the package does not comply with the senior and younger adult effectiveness specifications per this exemption. This exemption was requested by S.C. Johnson & Son, Inc., which argued that a package that does not require opening or activation to put into use should not require adult ease of opening testing.

DATES: This exemption becomes effective on June 13, 1997 and expires on June 13, 2002.

FOR FURTHER INFORMATION CONTACT: Rosalind L. Gross, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone number: (703) 308-7368, e-mail: gross.rosalind@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: S.C. Johnson & Son, Inc. requested an exemption from the senior-adult test and younger-adult test effectiveness specifications, described in 16 CFR 1700.15(b)(2) (Ease of adult opening), for prefilled, nonrefillable ant or roach insecticide bait stations that are not designed or intended to be opened or activated in a manner that exposes the contents to human contact.

I. Background

FIFRA 25(c)(3) requires EPA's CRP standards to be consistent with those of the Consumer Product Safety Commission (CPSC). EPA's CRP regulations at 40 CFR 157.32 require that CRP for pesticides meet the CPSC packaging standards (effectiveness specifications) and testing procedures set forth in 16 CFR 1700.15(b) and 17000.20. The CPSC Poison Prevention Packaging Standards in 16 CFR 1700.15(b) provide that CRP, when tested by the method described in 16 CFR 1700.20, shall meet certain child-resistant test, senior-adult test, and younger-adult test effectiveness specifications. In 16 CFR 1700.15(b)(2), the senior-adult test and younger-adult test effectiveness specifications are discussed with reference to the senior-adult panel test of 16 CFR 1700.20(a)(3) and the younger-adult panel test of 16 CFR 1700.20(a)(4), respectively.

The EPA CRP regulations provide that exemptions from compliance may be requested on a case-by-case basis for specific products based on technical factors (40 CFR 157.24(b)(3)). The regulations further provide that any such exemption decision will be published in the **Federal Register**, will be for a specified length of time, and will be applicable to any product with substantially similar composition and intended uses.

II. Requested Grounds for Exemption

As support for its exemption request, S.C. Johnson & Son, Inc. advanced the following arguments:

The purpose of adult testing is to ensure that CRP is not difficult for adults to use properly. If CRP is difficult for adults to open, the concern arises that the package may be disabled or left unsecured to eliminate the difficulty of reopening it. Under such circumstances the contents would be accessible to children. In the case of prefilled, nonrefillable ant or roach insecticide bait stations not designed or intended to be opened, this concern does not arise. There is no risk that an adult will disable or fail to resecure a difficult to open package, because the packages need not be opened or activated in order to function properly. As there is no concern that an adult will disable or fail to resecure such a package, there is also no concern that the contents of disabled or unsecured packages will be accessible to children. Instead, from a child safety standpoint, the only relevant question regarding such packages is whether they can prevent a child from gaining access to the bait.

III. Agency Determination

The Agency has considered the S.C. Johnson & Son, Inc. exemption request and the basis therefore and agrees that it is unnecessary to test the ability of a senior-adult or younger-adult to open and properly resecure a package not designed or intended to be opened or activated. No benefits in terms of improved child safety would be gained by such testing. Therefore, the Agency hereby grants a 5–year exemption from the senior-adult test and younger-adult test effectiveness specifications, described in 16 CFR 1700.15(b)(2) for prefilled, nonrefillable ant or roach insecticide bait stations not designed or intended to be opened or activated in a manner that exposes the contents to human contact. The Agency has authority under 40 CFR 157.24(b)(3) to grant an exemption from any CRP requirement, including the testing requirements, based on technical considerations.

IV. Exemption

A 5–year exemption is granted from the senior-adult test and younger-adult test effectiveness specifications, described in 16 CFR 1700.15(b)(2), for prefilled, nonrefillable ant or roach insecticide bait stations not designed or intended to be opened or activated in a manner that exposes the contents to human contact. Products that qualify for this exemption must fully comply with all other CRP effectiveness, compatibility, and durability standards as well as all other requirements of 40 CFR part 157. CRP certification for products relying on this exemption must specify that the package does not comply with the senior and younger adult effectiveness specifications per this exemption. This exemption becomes effective on June 13, 1997 and expires on June 13, 2002.

List of Subjects in 40 CFR Part 157

Administrative practice and procedure, Infants and children, Packaging and containers, Pesticides and pest, Reporting and recordkeeping requirements.

Dated: June 4, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–15565 Filed 6–12–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300494; FRL–5718–8]

RIN 2070–AB78

Propiconazole; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for combined residues of the pesticide propiconazole in on or the raw agricultural commodities dry beans, dry bean forage and dry bean hay in connection with EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of propiconazole on dry beans in Minnesota, North Dakota, Nebraska, Colorado and Kansas. These tolerances will expire and are revoked on December 31, 1998.

DATES: This regulation becomes effective June 13, 1997. Objections and requests for hearings must be received by EPA on or before August 12, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300494], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the document control number, [OPP–300494], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA. A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Such copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300494]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Olga Odiott, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location, telephone number, and e-mail: Sixth Floor, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. (703) 308-9363, e-mail: odiott.olga@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing tolerances for the combined residues of the pesticide propiconazole (1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole)and its metabolites determined as 2,4-dichlorobenzoic acid (DCBA) and expressed as parent compound, in or on dry beans at 0.5 part per million (ppm), in or on dry bean forage at 8.0 ppm, and in or on dry bean hay at 8.0 ppm. These tolerances will expire and be revoked by EPA on December 31, 1998. After December 31, 1998, EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104-170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996) (FRL–5572–9).

New 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 FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166. 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 a period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerance to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemptions for Propiconazole on Dry Beans and FFDCA Tolerances

The Applicants stated that *Uromyces appendiculatus*, the causal organism of the bean rust, has the potential to erupt in epidemic proportions. Due to the heavy precipitations during the winter in the Midwest and high rust buildup during previous years, the ideal environmental conditions are present for rapid development of the disease. The pathogen is capable of mutating and although resistance has been traditionally bred into bean varieties, the available cultivars are susceptible to the new races of the rust. The registered pesticides are protectant fungicides and must be applied before infection occurs. When disease pressure is high, effective control is difficult to attain with these pesticides unless all the growers in the region begin a calendar base spray program. Propiconazole is a curative fungicide and because of its post-infection activity allows an integrated pest management approach with applications made only at the first signs of infection. Propiconazole is also an antisporulant and thereby can reduce inoculum production. EPA has authorized under FIFRA section 18 the use of propiconazole on dry beans for control of rust (*Uromyces appendiculatus*). After having reviewed their submissions, EPA concurs that emergency conditions exist for these states.

As part of its assessment of these emergency exemptions, EPA assessed the potential risks presented by residues of propiconazole in or on dry beans. In doing so, EPA considered the new 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 new safety standard and with FIFRA section 18. These tolerances will permit the marketing of dry beans treated in accordance with the provisions of the section 18 emergency exemption. 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 these tolerances without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although these tolerances will expire and are revoked on December 31, 1998, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on dry beans, dry bean forage, and dry bean hay after that date will not be unlawful, provided the pesticide is applied during the term of, and in accordance with all the conditions of, section 18 of FIFRA. 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.

EPA has not made any decisions about whether propiconazole meets EPA's registration requirements for use on dry beans or whether permanent tolerances for this use would be appropriate. These tolerances do not serve as a basis for registration of propiconazole 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 Minnesota, North Dakota, Nebraska, Colorado, and Kansas to use this pesticide on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemptions for propiconazole, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. For many of these studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the ''no-observed effect level'' or ''NOEL'').

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a ''safety factor'') of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level.

The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. The TMRC is a ''worst case'' estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action.

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 propiconazole are discussed below.

1. *Acute toxicity*. Based on the available acute toxicity data, the Office of Pesticide Programs (OPP) has determined that the NOEL of 30 mg/kg/day from a developmental toxicity study in rats should be used to assess risks from acute toxicity. The developmental lowest effect level (LEL) of 90 mg/kg/day was based on the increased incidence of unossified sternebrae, rudimentary ribs, and shortened or absent renal papillae. This risk assessment evaluates acute dietary risk to females 13+ years.

2. *Short- and intermediate-term toxicity*. Based on the available data, OPP has determined that a NOEL of 30 mg/kg/day from a developmental toxicity study in rats should be used to assess risks from short- and intermediate-term dermal toxicity. At the developmental LEL of 90 mg/kg/day, there were increased incidences of unossified sternebrae, rudimentary ribs, and shortened or absent renal papillae. For short- and intermediate-term inhalation toxicity, OPP has determined that a NOEL of 92.8 mg/kg/day (0.5 mg/L), the highest dose tested from a 5-day inhalation toxicity study in rats should be used to assess risks for occupational and residential exposure scenarios.

3. *Chronic risk*. Based on the available chronic toxicity data, OPP has established the RfD for propiconazole at 0.013 mg/kg/day. The RfD is based on a one-year feeding study in dogs with a NOEL of 1.25 mg/kg/day and an uncertainty factor (UF) of 100. The LEL of 6.25 mg/kg/day was based on mild irritation of the gastric mucosa.

4. *Cancer risk*. Using its Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992), EPA has classified propiconazole as a Group C, ''possible human carcinogen'', chemical. The OPP Carcinogenicity Peer Review Committee (CPRC) recommended using the RfD approach for quantification of human risk.

B. Exposures and Risks

In examining aggregate exposure, FQPA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures. The primary non-food sources of exposure the Agency looks at include drinking water (whether from groundwater or surface water), and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children.

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.434) for the combined residues of propiconazole (1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole)and its metabolites determined as 2,4-dichlorobenzoic acid (DCBA) and expresed as parent compound, in or on a variety of raw agricultural commodities at levels ranging from 0.05 ppm in milk to 60 ppm in grass (seed screenings). Risk assessments were conducted by EPA to assess dietary exposures and risks from propiconazole as follows:

i. *Acute 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 one day or single exposure.

The acute dietary (food only) risk assessment used tolerance level residues and 100% crop-treated information. Thus, the acute dietary risk estimate is an over-estimate of exposure and it is considered to be protective of any acute exposure scenario. In the best scientific judgment of OPP, the acute dietary risk from the currently registered, and this proposed Section 18 uses of propiconazole, do not exceed our level of concern. For the population subgroup of concern, females 13+ years, a MOE value of 3,000 was calculated. Further refinement using anticipated residue values and percent crop-treated data would result in lower acute dietary risk estimates.

ii. *Chronic risk*. The chronic dietary risk assessment was partially refined using anticipated residue levels and percent crop-treated values for selected commodities. The population subgroup with the largest percentage of the RfD occupied is non-nursing infants less than 1 year old, at 20% of the RfD. This risk estimate should be viewed as conservative; further refinement using anticipated residue levels and percent crop-treated values for all commodities would result in lower dietary exposure estimates.

iii. *Cancer risk*. Based on the OPP Carcinogenicity Peer Review Committee's (CPRC) recommendation that the RfD approach be used to assess cancer risk, a quantitative cancer risk assessment was not performed. Human health risk concerns due to long-term exposure to propiconazole residues are adequately addressed by the aggregate chronic exposure analysis using the RfD.

2. *From drinking water*. Based on available studies used in EPA's assessment of environmental risk, propiconazole is soluble in water but relatively immobile in most soils and fairly persistent in the environment. No Maximum Concentration Level has been established for residues of propiconazole in drinking water. No Health Advisory Levels for propiconazole in drinking water have been established.

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 (RfD's or acute dietary NOEL's) 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 propiconazole to exceed the RfD if the tolerances being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with propiconazole 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 tolerances are granted.

3. *From non-dietary exposure.* Propiconazole is registered for residential usage as a preservative for finished wood (fences, window moldings) and for ornamental turf/lawns. Lawn care usage data available to the Agency indicates that there is no reported usage of propiconazole products by homeowners. Two sources reported usage by lawn care operators and landscapers. Based on acres treated information, between 3,850 to 6,725 households are estimated to be potentially treated with propiconazole. This represents between 0.004% to 0.007% of all households nationally.

i. *Acute risk.* EPA generally will not include residential or other non-dietary exposure as a component of the acute exposure assessment. Theoretically, it is also possible that a residential, or other non-dietary, exposure could be combined with the acute total dietary exposure from food and water. However, the Agency does not believe that aggregating multiple exposure to large amounts of pesticide residues in the residential environment via multiple products and routes for a one day exposure is a reasonably probable event. It is highly unlikely that, in one day, an individual would have multiple high-end exposures to the same pesticide by treating their lawn and garden, treating their house via crack and crevice application, swimming in a pool, and be maximally exposed in the food and water consumed. Additionally, the concept of an acute exposure as a single exposure does not allow for including post-application exposures, in which residues decline over a period of days after application. Therefore, the Agency believes that residential exposures are more appropriately included in the short-term exposure scenario discussed below.

ii. *Chronic risk.* Based on the nature of the outdoor and indoor residential uses of propiconazole, the Agency has concluded that a chronic residential exposure scenario does not exist.

iii. *Short- and intermediate-term risk.* Considering the nature of the outdoor residential uses, the Agency has concluded that a short- to intermediate-term outdoor residential exposure scenario could exist. The contribution from indoor residential inhalation exposure resulting from propiconazole-treated window moldings to the short- and intermediate-term aggregate risk would be negligible, and has not been included in this risk characterization.

In the absence of data, and until further data are provided, risks from residential uses will be assumed to account for 10% (5% each for outdoor and indoor residential usage) of the total allowable aggregate short- and intermediate-term risk. OPP considers this estimate of total aggregate short- and intermediate-term exposure as conservative and protective of the public health. In the best scientific judgment of OPP, the shortand intermediate-term aggregate risks from the currently registered, and the proposed Section 18 uses of propiconazole, do not exceed our level of concern.

C. Cumulative Exposure to Substances with Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether propiconazole 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, propiconazole 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 propiconazole has a common mechanism of toxicity with other substances.

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

1. *Acute risk.* For the population subgroup of concern, females 13+ and older (accounts for both maternal and fetal exposure), the calculated MOE

value is 3,000. This MOE value does not exceed the Agency's level of concern for acute dietary exposure. Despite the potential for exposure to propiconazole from drinking water EPA concludes that the aggregate acute risk from the currently registered uses of propiconazole does not exceed the Agency's level of concern.

2. *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. For propiconazole, EPA does not have concerns for short- and intermediate-term dietary exposure because of the very high values calculated for the MOEs. The calculated MOE value is 34,000 for the U.S. population. Despite the potential for exposure to propiconazole from drinking water EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to propiconazole residues.

3. *Chronic risk.* Using the conservative ARC exposure assumptions described above, EPA has concluded that aggregate exposure to propiconazole from food will utilize 7% of the RfD for the U.S. population. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to propiconazole in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to propiconazole residues.

4. *Cancer risk.* Based on the OPP Carcinogenicity Peer Review Committee's (CPRC) recommendation that the RfD approach be used to assess cancer risk, a quantitative cancer risk assessment was not performed. Human health risk concerns due to long-term exposure to propiconazole residues are adequately addressed by the aggregate chronic exposure analysis using the RfD.

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

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a 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 inter- and intra-species variability)) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

In assessing the potential for additional sensitivity of infants and children to residues of propiconazole, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

1. *Developmental toxicity studies.*—i. *Rat.* The maternal (systemic) NOEL was 30 mg/kg/day. The maternal LEL of 90 mg/kg/day was based on reduced body weight gain and rales in females. The developmental NOEL was also 30 mg/kg/day. The developmental LEL of 90 mg/kg/day was based on the increased incidence of unossified sternebrae, rudimentary ribs, and shortened or absent renal papillae.

ii. *Rabbit.* The maternal (systemic) NOEL was 100 mg/kg/day. The maternal LEL of 250 mg/kg/day was based on decreased food consumption and body weight gain. There was also an increased incidence of abortion at 400 mg/kg/day. The developmental NOEL was 400 mg/kg/day (HDT), based upon the lack of developmental delays or alterations.

2. *Reproductive toxicity study (rat).* From the 2-generation reproductive toxicity study in rats, the parental (systemic) LEL of 5 mg/kg/day, the lowest dose tested (LET), was based on the increased incidence of hepatic ''clear-cell change'' at all dose levels; additionally, at 25 and 125 mg/kg/day, decreased body weights, decreased food consumption, and/or an increased incidence of hepatic cellular swelling were observed. A NOEL for parental toxicity was not determined. The reproductive/ developmental NOEL was 25 mg/kg/day. The reproductive LEL of 125 mg/kg/day was based on decreased offspring survival of second generation (F.) pups, on decreased body weight throughout lactation, and on an increase in the incidence of hepatic cellular swelling for both generations of offspring (F1 and F. pups).

3. *Pre- and post-natal sensitivity.* The developmental toxicity NOELs were 30 mg/kg/day in rats and 400 mg/kg/day (HDT) in rabbits. Developmental toxicity was observed in rats at 90 mg/kg/day; these effects occurred in the presence of maternal toxicity. In rabbits, no developmental delays or alterations were noted; however, increased abortions were observed at the maternally toxic dose of 400 mg/kg/day. The developmental NOELs are more than 24- and 320-fold higher in rats and rabbits, respectively, than the NOEL of 1.25 mg/kg/day from the 1-year feeding study in dogs, which is the basis of the RfD.

In the two-generation reproductive toxicity study in rats, the reproductive (pup) toxicity NOEL of 25 mg/kg/day was greater than the parental (systemic) toxicity NOEL (<5 mg/kg/day; LET). The NOEL of 25 mg/kg/day for reproductive (pup) toxicity was 20-fold higher than the NOEL of 1.25 mg/kg/day from the 1-year feeding study in dogs, which is the basis of the RfD. The reproductive (pup) LEL of 125 mg/kg/day was based on decreased offspring survival of second generation (F.) pups, and on decreased body weight throughout lactation, and an increase in the incidence of hepatic cellular swelling for both generations of offspring (F. and F. pups). Because these reproductive effects occurred in the presence of parental (systemic) toxicity, these data do not suggest increased pre- or post-natal sensitivity to infants and children (that infants and children might be more sensitive than adults) to propiconazole exposure.

4. *Acute risk.* For the population subgroup of concern, females 13+ years, an MOE value of 3,000 was calculated using the high end exposure value of 0.01 mg/kg/day. Tolerance level residues and 100% crop-treated information were used in conducting the analysis. Thus, this acute dietary risk estimate is considered conservative. The large acute dietary MOE calculated for females 13+ years old provides assurance that there is a reasonable certainty of no harm from aggregate exposures to females 13+ years and the pre-natal development of infants.

5. *Short- or intermediate-term risk.* For the most highly exposed population subgroup (non-nursing infants less than

1 year old), a short- and intermediate-term MOE of 11,000 was calculated. The large MOE calculated for nonnursing infants provides assurance that there is a reasonable certainty of no harm for infants and children from short- and intermediate-term aggregate exposures to propiconazole residues.

6. *Chronic risk*. Using the conservative exposure assumptions described above, EPA has concluded that the percent of the RfD that will be utilized by aggregate exposure to residues propiconazole from food ranges from 8% for nursing infants, up to 20% for non-nursing infants (the most highly exposed population subgroup). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to propiconazole in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to propiconazole residues.

V. Other Considerations

1. *Metabolism in plants and animals*. The metabolism of propiconazole in plants and animals is adequately understood for the purposes of these tolerance actions. The residues of concern are propiconazole (1-[[2-(2,4-dichloro-phenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole), and its metabolites determined as 2,4-dichlorobenzoic acid (DCBA) and expressed as parent compound as per 40 CFR 180.434.

2. *Analytical enforcement methodology*. There are practical analytical methods for detecting and measuring levels of propiconazole in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances. EPA has provided information on these method to FDA. These methods have been approved for publication in PAM II for enforcement purposes.

3. *Magnitude of residues*. Residues of propiconazole are not expected to exceed 0.5 ppm in/on dry beans (seed), 8.0 ppm in/on dry bean forage, and 8.0 ppm in/on dry bean hay as a result of these Section 18 uses. Time-limited tolerances should be established at these levels. Secondary residues in animal commodities are not expected to exceed existing tolerances as a result of these Section 18 uses.

4. *International residue limits*. There are no Codex, Canadian, or Mexican international residue limits established for use of propiconazole on dry beans.

VI. Conclusion

Therefore, tolerances in connection with the FIFRA section 18 emergency exemptions are established for the combined residues of propiconazole and its metabolites determined as 2,4-dichlorobenzoic acid (DCBA) and expressed as parent compound, in or on dry beans at 0.5 ppm, in or on dry bean forage at 8.0 ppm, and in or on dry bean hay at 8.0 ppm.

VII. Objections and Hearing Requests

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

Any person may, by August 12, 1997, file written objections to any aspect of this regulation (including the revocation provision) and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(I). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor’s contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (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.

VIII. Public Docket

A record has been established for this rulemaking under docket control number [OPP–300494]. A public version of this record, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

The official record for this rulemaking, as well as the public version, as described above, is kept in paper form. Accordingly, in the event there are objections and hearing requests, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

IX. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ‘‘significant regulatory action’’ and, since this action does not impose any information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, it is not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because FFDCA section 408(l)(6) permits establishment of this regulation without a notice of proposed rulemaking, the regulatory flexibility analysis requirements of the Regulatory Flexibility Act, 5 U.S.C. 604(a), do not apply. Nonetheless, the Agency has previously assessed whether establishing tolerances or exemptions from tolerance, raising tolerance levels, or expanding exemptions adversely impact small entities and concluded, as a generic matter, that there is no adverse impact. (46 FR 24950, May 4, 1981).

Under 5 U.S.C. 801(a)(1)(A) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104-121, 110 Stat. 847), EPA submitted 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 General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: May 28, 1997.

James Jones,

Acting 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. 346a and 371.

2. In § 180.434, paragraph (b) is amended by alphabetically adding the tolerances to the table to read as follows:

§ 180.434 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/ Revocation Date
* * * *	* *	*
Dry bean forage	8.0	December 31, 1998
Dry bean hay	8.0	December 31, 1998
Dry beans	0.5	December 31, 1998
* * * *	*	* *

* * * * *

[FR Doc. 97–15373 Filed 6–12–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300497; FRL–5718–6]

RIN 2070-AC78

Azoxystrobin; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of the fungicide azoxystrobin in or on the raw agricultural commodities rice and rice straw and hulls, liver of cattle, hog, goat, horse, sheep, and poultry; meat and fat of cattle, goat, horse, sheep, poultry, and swine; kidney and milk of cattle; and eggs in connection with EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of azoxystrobin on rice in Mississippi. This regulation establishes maximum permissible levels for residues of azoxystrobin on the commodities listed above pursuant to section 408(l)(6) of the Federal Food, Drug and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on May 30, 1999.

DATES: This regulation becomes effective June 13, 1997. Objections and requests for hearings must be received by EPA on August 12, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, OPP–300497, must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the document control number, OPP–300497, should be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number OPP–300497. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Virginia Dietrich, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Document Processing Desk, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 308–9359, e-mail: dietrich.virginia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing tolerances for residues of the fungicide azoxystrobin (methyl (E)-2-{2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]phenyl}-3-methoxyacrylate) in or on rice grain at 4 ppm, rice straw at 10 ppm, and rice hulls at 20 ppm. These tolerances will expire and are revoked on May 30, 1999. After May 30, 1999, EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104-170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq*. The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 CFR 58135, November 13, 1996) (FRL–5572–9).

New section 408(b)(2)(A)(i) 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, 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 FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) 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. Section 408(l)(6) also requires EPA to promulgate regulations by August 3, 1997, governing the establishment of tolerances and exemptions under section 408(l)(6) and requires that the regulations be consistent with section 408(b)(2) and (c)(2) and FIFRA section 18.

Section 408(l)(6) allows EPA to establish tolerances or exemptions from the requirement for a tolerance, in connection with EPA's granting of FIFRA section 18 emergency exemptions, without providing notice or a period for public comment. Thus, consistent with the need to act expeditiously on requests for emergency exemptions under FIFRA, EPA can establish such tolerances or exemptions under the authority of section 408(e) and (l)(6) without notice and comment rulemaking.

In establishing section 18-related tolerances and exemptions during this interim period before EPA issues the section 408(l)(6) procedural regulation and before EPA makes its broad policy decisions concerning the interpretation and implementation of the new section 408, EPA does not intend to set precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Rather, these early section 18 tolerance and exemption decisions will be made on a case-by-case basis and will not bind EPA as it proceeds with further rulemaking and policy development. EPA intends to act on section 18-related tolerances and exemptions that clearly qualify under the new law.

II. Emergency Exemptions for Azoxystrobin on Rice and FFDCA Tolerances

On January 30, 1997, the State of Mississippi, Department of Agriculture and Commerce requested a specific exemption under FIFRA section 18 for the use of azoxystrobin to control sheath blight on rice. Similar requests were received from Arkansas, Louisiana, Missouri, and Texas. The applicant stated that growers will experience significant economic loss if the pest is not adequately controlled. After having reviewed their submission, EPA concurs that an emergency condition exists.

As part of its assessment of these applications for emergency exemption, EPA assessed the potential risks presented by residues of azoxystrobin on rice. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided to grant the section 18 exemptions only after concluding that the necessary tolerance under FFDCA section 408(l)(6) would clearly be consistent with the new safety standard and with FIFRA section 18. These tolerances for azoxystrobin will permit the marketing of rice treated in accordance with the provisions of the section 18 emergency exemptions. Consistent with the need to move quickly on the emergency exemptions and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e) as provided in section 408(l)(6). Although these tolerances will expire and are revoked on May 30, 1999, under FFDCA section 408(l)(5), residues of azoxystrobin not in excess of the amount specified in the tolerances remaining in or on rice after that date will not be unlawful, provided the pesticide is applied during the term of, and in accordance with all the conditions of, the emergency exemptions. 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.

EPA has not made any decisions about whether azoxystrobin meets the requirements for registration under FIFRA section 3 for use on rice or whether permanent tolerances for azoxystrobin for rice would be appropriate. This action by EPA does not serve as a basis for registration of azoxystrobin by a State for special local needs under FIFRA section 24(c). Nor does this action serve as the basis for any State other than California to use this product on this rice under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR 180.166. For additional information regarding the emergency exemptions for azoxystrobin, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. For many of these studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the ‘‘no-observed effect level’’ or ‘‘NOEL’’).

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a ‘‘safety factor’’) of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered by EPA to pose a reasonable certainty of no harm.

EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, and other non-occupational exposures, such as where residues leach into groundwater or surface water that is consumed as drinking water. Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. The TMRC is a ‘‘worst case’’ estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100 percent of the rice is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of rice treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. Azoxystrobin is not registered by EPA for indoor or outdoor residential use. EPA has sufficient data to assess the hazards of azoxystrobin and to make a determination on aggregate exposure, consistent with section 408(b)(2), for the time-limited tolerances for residues of azoxystrobin in or on rice grain at 4 parts per million (ppm); rice straw at 10 ppm; rice hulls at 20 ppm; liver of cattle, goat, horse, and sheep at 0.3 ppm, meat and fat of cattle, goat, horse, sheep, poultry, and swine at 0.01 ppm; cattle kidney at 0.06 ppm; milk at 0.006 ppm; poultry liver at 0.4 ppm; hog liver at 0.2 ppm; and eggs at 0.4 ppm. EPA's assessment of the dietary exposures and risks associated with establishing these tolerances follows.

A. Toxicological Profile

1. *Acute risk*. The Agency did not identify an acute dietary endpoint and has determined that this risk assessment is not required.

2. *Chronic risk*. The RfD, based on a chronic toxicity study in rats with a NOEL of 18.2 milligrams/kilograms/day (mg/kg/day), was established at 0.18 mg/kg/day. Reduced body weights and bile duct lesions were observed at the lowest effect level (LEL) of 34 mg/kg/day. An Uncertainty Factor (UF) of 100 was used to account for both the interspecies extra-polation and the intraspecies variability.

3. *Short and intermediate term risk*. No toxic endpoints for these durations of exposure were identified in the toxicological data base.

4. *Cancer risk*. Azoxystrobin has been classified by the Agency's RfD Committee (November 7, 1996) as ‘‘Not Likely’’ to be carcinogenic to humans via relevant routes of exposure. This decision was made according to the 1996 proposed guidelines. Therefore, cancer risk was not assessed.

5. *Risk to infants and children*--i. *Developmental toxicity studies*--a. Rabbit. In the developmental toxicity study in rabbits, the developmental NOEL was 500 mg/kg/day, at the highest dose tested (HDT). Because there were no treatment-related effects, the developmental LEL was ≥500 mg/kg/day. The maternal NOEL was 150 mg/kg/day. The maternal LEL of 500 mg/kg/day was based on decreased body weight gain during dosing.

b. Rat. In the developmental toxicity study in rats, the maternal (systemic) NOEL was not established. The maternal LEL of 25 mg/kg/day at the lowest dose tested (LDT) was based on increased salivation. The developmental (fetal) NOEL was 100 mg/kg/day (HDT).

(ii) *Reproductive toxicity studies--Rat*. In the reproductive toxicity study in rats, the parental (systemic) NOEL was 32.3 mg/kg/day. The parental LEL of 165.4 mg/kg/day was based on decreased body weights in males and females, decreased food consumption and increased adjusted liver weights in females, and cholangitis. The reproductive NOEL was 32.3 mg/kg/day. The reproductive LEL of 165.4 mg/kg/day was based on increased weanling liver weights and decreased body weights for pups of both generations.

B. Aggregate Exposure and Risk

Tolerances for residues of azoxystrobin do not exist. In examining aggregate exposure, FQPA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures. The primary non-food sources of exposure the Agency looks at include drinking water (whether from groundwater or surface water), and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children.

At present there are no tolerances for residues of azoxystrobin because it is currently registered under section 3 of FIFRA only for use on golf courses and commercial turf farms. Short and intermediate term aggregate risk assessments were not conducted on azoxystrobin since no toxic endpoints for these durations of exposure were identified in the toxicological data base.

The Agency identified chronic exposure as appropriate for aggregate risk assessment. The Agency determined that an acute exposure analysis is not required because no acute dietary endpoints for azoxystrobin were identified.

The Agency identified chronic exposure as appropriate for aggregate risk assessment. The aggregate chronic risk is equal to the sum of the chronic risk from exposure from food + water + residential (indoor and outdoor) uses. Azoxystrobin is not registered for any residential uses so no exposure from this route is expected. The Agency estimates that aggregate risk (food plus drinking water) would not exceed the RfD for azoxystrobin.

The chronic dietary (food only) risk assessment used the TMRC. Therefore, the resulting exposure estimates should be viewed as conservative; further refinement using anticipated residues and/or percent of crop treated would result in lower dietary exposure estimates. For chronic dietary (food only) risk estimates, the population subgroup with the largest percentage of the RfD occupied is non-nursing infants less than 1 year old at 3.9% of the RfD.

Azoxystrobin and its transformation products may potentially contaminate surface waters through spray drift or surface water run-off. In addition, transformation products of azoxystrobin exhibit properties of pesticides found in ground water; some persistence and mobility in laboratory and field studies. For this reason, exposure to azoxystrobin through drinking water was considered during the risk assessment.

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 (RfD's or acute dietary NOEL's) 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 consumption of contaminated water, the ranges the Agency is continuing to examine are all well below the level that would cause azoxystrobin to exceed the RfD if the tolerances being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with azoxystrobin 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 tolerances are granted.

Using these conservative estimates, the sum total of the aggregate chronic risk estimates (food, water, residential indoor, and outdoor) for azoxystrobin for the population subgroup with the largest percentage of the RfD occupied, non-nursing infants less than 1 year old, is 13.9%. In the best scientific judgement of the Agency, the azoxystrobin aggregate chronic risk does not exceed our level of concern.

C. Cumulative Exposure to Substances with Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical-specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether azoxystrobin 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, azoxystrobin 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 azoxystrobin has a common mechanism of toxicity with other substances.

D. Safety Determinations for U.S. Population

Based on the completeness and reliability of the toxicity data and the conservative TMRC dietary exposure assumptions, EPA has concluded that dietary exposure from food to azoxystrobin will occupy 1 percent of the RfD for the U.S. population. EPA generally has no concern for exposures below 100 percent of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Whatever reasonable bounding figure the Agency eventually decides upon for the contribution from water, that number is expected to be well below 99 percent of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to azoxystrobin residues.

E. Determination of Safety for Infants and Children

FFDCA section 408 provides that EPA shall apply an additional 10-fold MOE (safety factor) for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the data base unless EPA determines that a different MOE (safety) will be safe for infants and children. MOE (safety) are often referred to as uncertainty (safety) factors. EPA believes that reliable data support using the standard MOE (usually 100x for combined inter- and intra-species variability) and not the additional 10-fold MOE 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. Based on current toxicological data requirements, the data base for azoxystrobin relative to pre (provided by rat and rabbit developmental studies) and post-natal (provided by the rat reproduction study) toxicity is complete.

In assessing the adequacy of the standard uncertainty factor for azoxystrobin, 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 pesticide exposure during pre-natal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

Developmental toxicity from azoxystrobin was not observed in developmental studies using rats and rabbits. The pre- and post-natal toxicology data base for azoxystrobin is complete with respect to current toxicological data requirements. The results of these studies indicate that infants and children are not more sensitive to exposure, based on the results of the rat and rabbit developmental toxicity studies and the 2-generation reproductive toxicity study in rats.

The results of the rabbit developmental toxicity study did not indicate that an acute dietary risk assessment needed to be performed. For rabbits, the developmental toxicity NOEL was 500 mg/kg/day, at the HDT. The maternal NOEL of 150 mg/kg/day was based on decreased body weight gain at the LEL of 500 mg/kg/day. For rats, the developmental toxicity NOEL was 100 mg/kg/day at the HDT. The maternal NOEL was not determined and the maternal LEL of 25 mg/kg/day at the LDT was based on increased salivation.

In the 2-generation reproductive toxicity study, the reproductive and parental (systemic) NOEL were both 32.3 mg/kg/day. The reproductive LEL of 165.4 mg/kg/day was based on increased weanling liver weights and decreased body weight in pups of both generations. These effects occurred in the presence of parental (systemic) toxicity. The parental (systemic) LEL of 165.4 mg/kg/day was based on decreased body weights, decreased food consumption and increased adjusted liver weights in females, and cholangitis generations. The Agency notes that the NOEL of 18.2 mg/kg/day used to establish the RfD is approximately 2-fold lower than the reproductive NOEL; therefore, the Agency concludes that this section 18 request does not represent any unacceptable pre- or post-natal risk to infants and children.

Despite the potential for exposure to drinking water, EPA has concluded that the percentage of the RfD that will be utilized by dietary exposure (including drinking water exposure) to residues of azoxystrobin does not exceed 100 percent for any of the population subgroups. Based on TMRC exposure estimates for food, as described above, EPA has concluded that the percentage of the RfD that will be utilized by dietary exposure to residues of azoxystrobin ranges from 11 percent for children 1 to 6 years old, and up to 13.9 percent for non-nursing infants (the most highly exposed population subgroup). Therefore, taking into account the completeness and reliability of the toxicity data and the conservative exposure assessment, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to azoxystrobin residues. Therefore, EPA believes that reliable data show that the standard uncertainty factor will be protective of the safety of infants and children and an additional uncertainty factor is not needed.

Based on the above, EPA concludes that reliable data support use of the standard 100-fold MOE/uncertainty factor and that an additional safety factor is not needed to protect the safety of infants and children.

V. Other Considerations

The metabolism of azoxystrobin in plants is adequately understood for the purposes of this tolerance. There is no Codex maximum residue level established for residues of azoxystrobin on rice. An adequate enforcement method, GC-NPD or HPLC-UV, is available to enforce the tolerance expression on plant commodities. An enforcement method (GC-NPD) has been proposed for animal tissues in association with a recently submitted petition on wheat. The method has been submitted for a petition method validation. These methods are available to anyone who is interested in pesticide residue enforcement from: By mail, Calvin Furlow, Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., Washington, DC 20460. Office location and telephone number: Crystal Mall #2, Rm 1128, 1921 Jefferson Davis Hwy., Arlington, VA, 703-305-5805.

VI. Conclusion

Therefore, tolerances in connection with the FIFRA section 18 emergency exemptions are established for residues of azoxystrobin and its Z-isomer to support this section 18 specific exemption:

eggs: 0.4 ppm.

kidney, cattle: 0.06 ppm,

liver of cattle, goat, horse, and sheep: 0.3 ppm,

liver, hog: 0.2 ppm,

liver, poultry: 0.4 ppm,

meat and fat of cattle, goat, horse, sheep, poultry, and swine: 0.01 ppm,

milk: 0.006 ppm,

rice, grain: 4 ppm,

rice, straw: 10 ppm,

rice, hulls: 20 ppm,

These tolerances will expire and are revoked on May 30, 1999.

VII. Objections and Hearing Requests

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

Any person may, by August 12, 1997, file written objections to any aspect of this regulation (including the automatic revocation provision) and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

A record has been established for this rulemaking under docket number [OPP–300497]. A public version of this record, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

The official record for this rulemaking, as well as the public version, as described above, is kept in paper form. Accordingly, in the event there are objections and hearing requests, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

IX. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines ''a significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. Pursuant to the terms of this Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

This action does not impose any enforceable duty, or contain any ''unfunded mandates'' as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled Enhancing the Intergovernmental Partnership, or special consideration as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because FFDCA section 408(l)(6) permits establishment of this regulation without a notice of proposed rulemaking, the regulatory flexibility analysis requirements of the Regulatory Flexibility Act, 5 U.S.C. 604(a), do not apply.

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104-121, 110 Stat. 847), EPA submitted 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 General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 180

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

Dated: June 2, 1997.

James Jones,

Acting 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. 346a and 371.

2. By adding § 180.507 to read as follows:

§ 180.507 Azoxystrobin; tolerances for residues.

(a) *General*. [Reserved]

(b) *Section 18 emergency exemptions*. Time limited tolerances are established for residues of the fungicide azoxystrobin in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerance is specified in the following table. The tolerance expires and will be revoked by EPA on the date specified in the table.

Commodity	Parts per million	Expiration/Revocation Date
Eggs	0.4	5/30/99
Kidney, cattle	0.06	5/30/99
Liver of cattle, goat, horse, and sheep	0.3	5/30/99
Liver, hog	0.2	5/30/99
Liver, poultry	0.4	5/30/99
Meat and fat of cattle, goat, horse, sheep, poultry, and swine	0.01	5/30/99
Milk	0.006	5/30/99
Rice, grain	4	5/30/99
Rice, hulls	20	5/30/99
Rice, straw	10	5/30/99

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

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

[FR Doc. 97–15564 Filed 6–12–97; 8:45 am]

BILLING CODE 6560–50–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

41 CFR Parts 51–3, 51–4, and 51–6

Miscellaneous Amendments to Committee Regulations

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Final rule.

SUMMARY: The Committee is making changes to four sections of its regulations to clarify them and improve the efficiency of operation of the Committee's Javits-Wagner-O'Day (JWOD) Program. The changes are necessary to assure consistency with an earlier regulation change, eliminate an unnecessary rule, encourage more efficient contracting, and inform the public of a change in Committee policy on military resale items.

EFFECTIVE DATE: July 14, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: G. John Heyer (703) 603–7740. Copies of this notice will be made available on request in computer diskette format.

SUPPLEMENTARY INFORMATION: Since the Committee's regulations were last amended on October 20, 1995 (60 FR 54199), the Committee has noticed several instances where minor changes or clarifications are needed. The Committee has decided to make these changes in one rulemaking rather than individually.

In a 1994 revision (59 FR 59342), 41 CFR 51–3.2(d), concerning the requirement for central nonprofit agencies to recommend to the Committee commodities and services for addition to the Procurement List, with initial fair market prices, was split into two paragraphs (41 CFR 51–3.2(d) and (e)) to make it consistent with the Committee's statute, which treats addition of commodities or services to the Procurement List and determination of fair market prices as two distinct Committee functions. However, the related provision at 41 CFR 51–3.2(c) requiring central nonprofit agencies to obtain from Federal contracting activities the information needed for the Committee to perform these functions was not similarly divided. The change to 41 CFR 51–3.2(c) makes this division.

The Committee's requirements for a nonprofit agency to maintain its qualification to participate in the JWOD Program (41 CFR 51–4.3) include compliance with applicable Department of Labor (DOL) compensation, employment, and occupational health and safety standards (paragraph (b)(2)), and establishment of written procedures to encourage filling of vacancies within the nonprofit agency by promotion of qualified employees who are blind or have other severe disabilities (paragraph (b)(9)). Because of the dollar value of their Federal contracts under the JWOD Program, most JWOD nonprofit agencies are required by DOL employment standards promulgated under authority of section 503 of the Rehabilitation Act to have procedures like those required by paragraph (b)(9). The Committee strongly endorses the policies underlying these DOL employment standards. Accordingly, the Committee is removing paragraph (b)(9) and revise paragraph (b)(2) to make clear to the public that the DOL standards it mentions include the procedures formerly required by paragraph (b)(9).

Commodities and services added to the Procurement List normally remain on it indefinitely. The Administration's reinvention of Government initiatives encourage the use of long-term contracts to minimize administrative delay and expense. The Committee is amending its existing regulation (41 CFR 51–6.3) on use of long-term ordering agreements for JWOD commodities to add a paragraph encouraging contracting activities to use the longest contract term available to them when buying commodities or services from the JWOD Program.

The Committee's regulation on military resale commodities (41 CFR 51–6.4) has traditionally identified the specific numbered commodity series to which it applies. The Committee is amending this regulation to include two new series which have been authorized by the Committee for the military resale program.

Public Comments on the Proposed Rule

The Committee published the proposed rule in the **Federal Register** of March 27, 1997 (62 FR 14660). No comments were received. Accordingly, the Committee's regulations are being amended as stated in the proposed rule.

Regulatory Flexibility Act

I certify that this revision of the Committee regulations will not have a significant economic impact on a substantial number of small entities because the revision clarifies program policies and does not essentially change the impact of the regulations on small entities.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply to this final rule because it contains no information collection or recordkeeping requirements as defined in that Act and its regulations.

Executive Order No. 12866

The Committee has been exempted from the regulatory review requirements of the Executive Order by the Office of Information and Regulatory Affairs. Additionally, the final rule is not a significant regulatory action as defined in the Executive Order.

List of Subjects

41 CFR Parts 51–3 and 51–6

Government procurement, Handicapped.

41 CFR Part 51–4

Reporting and recordkeeping requirements.

For the reasons set out in the preamble, parts 51–3, 51–4, and 51–6 of title 41, chapter 51 of the Code of Federal Regulations are amended as follows:

1. The authority citation for parts 51–3, 51–4, and 51–6 continues to read as follows:

Authority: 41 U.S.C. 46–48c.

PART 51–3—CENTRAL NONPROFIT AGENCIES

2. Section 51–3.2 is amended by revising paragraph (c) to read as follows:

§ 51–3.2 Responsibilities under the JWOD Program.

* * * * *

(c) Obtain from Federal contracting activities such procurement information as is required by the Committee to:

(1) Determine the suitability of a commodity or service being recommended to the Committee for addition to the Procurement List; or

(2) Establish an initial fair market price for a commodity or service or make changes in the fair market price.

* * * * *

PART 51–4—NONPROFIT AGENCIES

3. Section 51–4.3 is amended by revising paragraph (b)(2), removing paragraph (b)(9), and redesignating paragraph (b)(10) as (b)(9), to read as follows:

§ 51–4.3 Maintaining qualification.

* * * * *

(b) * * *

(2) Comply with the applicable compensation, employment, and occupational health and safety standards prescribed by the Secretary of Labor, including procedures to encourage filling of vacancies within the nonprofit agency by promotion of qualified employees who are blind or have other severe disabilities.

* * * * *

PART 51–6—PROCUREMENT PROCEDURES

4. Section 51–6.3 is amended by revising the section title, redesignating the existing text of the section as paragraph (a), and adding paragraph (b), to read as follows:

§ 51–6.3 Long-term procurements.

* * * * *

(b) Contracting activities are encouraged to use the longest contract term available by law to their agencies for contracts for commodities and services under the JWOD Program, in order to minimize the time and expense devoted to formation and renewal of these contracts.

5. Section 51–6.4 is amended by revising the second sentence of paragraph (b) and paragraphs (c)(2), (c)(4), and (d) to read as follows:

§ 51–6.4 Military resale commodities.

* * * * *

(b) * * * Authorized resale outlets may stock commercial items comparable to the military resale commodities they stock, except that military commissary stores shall stock military resale commodities in the 800–, 900–, and 1000– series exclusively, unless an exception has been granted on an individual store basis for the stocking of comparable commercial items for which there is a significant customer demand.

(c) * * *

(2) Require the stocking in commissary stores of military resale commodities in the 400–, 500–, 800–, 900–, and 1000– series in as broad a range as is practicable.

* * * * *

(4) Establish policies and procedures which reserve to its agency headquarters the authority to grant exceptions to the exclusive stocking of 800–, 900–, and 1000– series military resale commodities.

(d) The Defense Commissary Agency shall provide the Committee a copy of each directive which relates to the stocking of military resale commodities in commissary stores, including exceptions authorizing the stocking of commercial items in competition with 800–, 900–, and 1000– series military resale commodities.

* * * * *

Dated: June 10, 1997.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–15580 Filed 6–12–97; 8:45 am]

BILLING CODE 6353–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–144; RM–8827]

Radio Broadcasting Services; Alamogordo, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Burt Broadcasting, Inc., allots Channel 300A to Alamogordo, NM, as the community's fourth local commercial FM service. *See* 61 FR 37715, July 19, 1996. Channel 300A can be allotted to Alamogordo in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.8 kilometers (8.6 miles) north, at coordinates 33–01–26 North Latitude and 105–58–26 West Longitude, to avoid a short-spacing to vacant and unapplied-for Channel 300C at Balderas, Chihuahua, Mexico. Alamogordo is located within 320 kilometers (199 miles) of the U.S.-Mexican border. Mexican concurrence in the allotment was requested in October, 1996, but has not yet been received. In light of the prolonged pendency of this proceeding, yet in an effort to introduce a new FM service to Alamogordo, we shall grant the proposal with the following condition: ''Operation with the facilities specified herein is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement.'' With this action, this proceeding is terminated.

DATES: Effective July 21, 1997. The window period for filing applications will open on July 21, 1997, and close on August 21, 1997.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–144, adopted May 28, 1997, and released June 6, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by adding Channel 300A at Alamogordo.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–15527 Filed 6–12–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–71; RM–8920]

Radio Broadcasting Services; Chatom and Grove Hill, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 291C3 from Chatom to Grove Hill, Alabama, and modifies the authorization of Capital Assets, Inc. for Station WFOW(FM) to specify operation on Channel 291C3 at Grove Hill, as requested, pursuant to the provisions of Section 1.420(i) of the Commission's Rules. *See* 62 FR 9408, March 3, 1997. The reallotment of Channel 291C3 to Grove Hill will provide the larger community with its first local aural transmission service. Coordinates used for Channel 291C3 at Grove Hill are 31–48–20 and 87–38–07. With this action, the proceeding is terminated.

DATES: Effective July 21, 1997.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–71, adopted May 28, 1997, and released June 6, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Chatom, Channel 291C3 and adding Grove Hill, Channel 291C3.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–15529 Filed 6–12–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–206; RM–8877]

Radio Broadcasting Services; Raton, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of N'Joy Broadcasting, allots Channel 249A to Raton, NM, as the community's third local FM service. The petitioner can also amend its pending application (BPH–960124MA) to specify operation on Channel 249A in lieu of Channel 243A and retain cut-off protection. *See* 61 FR 55125, October 25, 1996. Channel 249A can be allotted to Raton in compliance with the Commission's minimum distance separation requirements at the transmitter site specified in petitioner's pending application, which is 6.3 kilometers (3.9 miles) north of the community, at coordinates 36–57–18 North Latitude and 104–25–22 West Longitude. The Commission did not allot Channel 299A to Raton, which was proposed to accommodate other parties expressing an intention to apply for the channel, because no such expressions of interest were received. With this action, this proceeding is terminated.

DATE EFFECTIVE: July 21, 1997.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–206, adopted May 28, 1997, and released June 6, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by adding Channel 249A at Raton.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–15528 Filed 6–12–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–92; RM–9032]

Radio Broadcasting Services; Mukwonago, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action in this document allots Channel 287A to Mukwonago, Wisconsin, as that community's first local broadcast service in response to a petition filed by Faith Congregation. *See* 62 FR 13582, March 21, 1997. There is a site restriction 11.8 kilometers (7.3 miles) west of the community. The coordinates for Channel 287A are 42–54–15 and 88–27–55. With this action, this proceeding is terminated.

DATES: Effective July 21, 1997. The window period for filing applications for Channel 287A at Mukwonago, Wisconsin, will open on July 21, 1997, and close on August 21, 1997.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 97–92, adopted May 28, 1997, and released June 6, 1997.

The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC. 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by adding Mukwonago, Channel 287A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–15523 Filed 6–12–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–248; RM–8950]

Radio Broadcasting Services; Dickson, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Redwood Broadcasting, Inc., allots Channel 278C3 to Dickson, OK, as the community's first local aural transmission service. *See* 61 FR 66250, December 17, 1996. Channel 278C3 can be allotted to Dickson in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 34–11–14 North Latitude and 96–59–03 West Longitude. With this action, this proceeding is terminated.

DATES: Effective July 21, 1997. The window period for filing applications will open on July 21, 1997, and close on August 21, 1997.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–248, adopted May 28, 1997, and released June 6, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Dickson, Channel 278C3.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–15522 Filed 6–12–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–16; RM–8932]

Radio Broadcasting Services; Nashville, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 245A to Nashville, Arkansas, as that community's second local FM service in response to a petition filed on behalf of Temperance Broadcasting Company. *See* 62 FR 3853, January 27, 1997. Coordinates used for Channel 245A at Nashville are 33–59–12 and 93–51–54. With this action, the proceeding is terminated.

DATES: Effective July 21, 1997. The window period for filing applications for Channel 245A at Nashville, Arkansas, will open on July 21, 1997, and close on August 21, 1997.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process for Channel 245A at Nashville, Arkansas, should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–16, adopted May 28, 1997, and released June 6, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by adding Channel 245A at Nashville.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–15520 Filed 6–12–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–40; RM–8949]

Radio Broadcasting Services; Glenwood Springs, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 238A to Glenwood Springs, Colorado, as that community's third local FM service in response to a petition filed on behalf of Roaring Fork Broadcasting Company. *See* 62 FR 5788, February 7, 1997. Coordinates used for Channel 238A at Glenwood Springs are 39–32–36 and 107–19–18. With this action, the proceeding is terminated.

DATES: Effective July 21, 1997. The window period for filing applications for Channel 238A at Glenwood Springs, Colorado, will open on July 21, 1997, and close on August 21, 1997.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process for Channel 238A at Glenwood Springs, Colorado, should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–40, adopted May 28, 1997, and released June 6, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Channel 238A at Glenwood Springs.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–15524 Filed 6–12–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–212; RM–8884]

Radio Broadcasting Services; Portland and Seaside, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Radio Systems of Miami, Inc., substitutes Channel 254C1 for Channel 253C at Portland, OR, and modifies the license of Station KUPL–FM to specify operation on the lower class channel. To accommodate the allotment at Portland, Channel 272A is substituted for Channel 255A at Seaside, OR, and the construction permit of Station KULU(FM) is modified to specify the alternate Class A channel. *See* 61 FR 55780, October 29, 1996. The allotment of Channel 254C1 at Portland could enable Station KUPL–FM to relocate its transmitter to better serve its community of license. Channel 254C1 can be allotted to Portland with a site restriction of 9.1 kilometers (5.6 miles) west, at coordinates 45–30–58 NL; 122–43–59 WL, to accommodate petitioner's desired site. Channel 272A can be allotted to Seaside at the transmitter site specified in Station KULU(FM)'s construction permit, at coordinates 45–54–35 NL; 123–56–07 WL. Canadian concurrence in these allotments has been received since both communities are located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 21, 1997.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–212, adopted May 28, 1997, and released June 6, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 253C and adding Channel 254C1 at Portland, and removing Channel 255A and adding Channel 272A at Seaside.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–15521 Filed 6–12–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–268; DA 97–1193]

Advanced Television Systems and Their Impact on the Existing Television Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; consolidated petitions for reconsideration.

SUMMARY: The Commission is allowing parties to submit consolidated petitions for reconsideration of the *Fifth Report and Order* and *Sixth Report and Order* in this proceeding. The Commission is also increasing the page limit for such consolidated petitions to 50 pages. This action will eliminate the need for filing of duplicative pleadings, reduce the burden on responding parties and conserve Commission. Parties preparing to submit petitions for reconsideration of either or both of these decisions are also advised that they may submit filings addressing only one of these decisions or may submit separate filings addressing both decisions individually, in accordance with the standard procedures for petitions for rule making.

Filings that address only one decision will continue to be limited to 25 pages.

DATES: Petitions for reconsideration of the *Fifth Report and Order* are due June 16, 1997; petitions for reconsideration of the *Sixth Report and Order* are due June 13, 1997.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Bruce Franca (202–418–2470), Alan Stillwell (202–418–2470) or Robert Eckert (202–428–2470), Office of Engineering and Technology.

SUPPLEMENTARY INFORMATION:

1. On April 3, 1997, the Commission adopted two decisions in this proceeding: the *Fifth Report and Order* in MM Docket No. 87–268, FCC 97–116 and the *Sixth Report and Order* in MM Docket No. 87–268, FCC 97–115. The *Fifth Report and Order* established service rules for digital television (DTV); the *Sixth Report and Order* established a DTV Table of Allotments, rules for the initial DTV allotments; procedures for assigning for DTV channels, and plans for spectrum recovery.

2. On May 29, 1997, the Association for Maximum Service Television, Inc. (MSTV) submitted a motion seeking permission to file a single petition for reconsideration of the *Fifth and Sixth Reports and Orders* that would exceed the 25-page limitation set forth in § 1.429(d) of the Commission's rules, 47 CFR 1.429(d). MSTV states that as evidenced by the numerous passages in the decisions that refer back to the separate decisions, the Commission's decisions with respect to many DTV service rule and allotment/assignment issues are interrelated and cannot be meaningfully assessed in isolation. It therefore submits that one petition addressing both the *Fifth and Sixth Reports and Orders* will provide an efficient means of responding to these decisions and also provide the Commission with the most studied and accurate response and information possible. It further states that a thoughtful discussion in a single document of both DTV service rule and allotment/assignment issues will necessitate exceeding the 25-page limitation.

3. We recognize MSTV's position that many of the issues addressed in the *Fifth and Sixth Reports and Orders* are interrelated and that it may be more efficient for parties to respond to these decisions in a single, consolidated petition for reconsideration. In this case, a single filing could eliminate the need for duplicative pleadings, reduce the burden on responding parties and conserve Commission resources. Thus, we find that there is good cause for granting MSTV's motion for permission to file a single petition that addresses both decisions. Although we do not routinely grant extensions of the page limits for pleadings filed with the Commission (*see* 47 CFR 1.48(b)), we find that, given the number and complexity of the issues addressed in the *Fifth and Sixth Reports and Orders*, it is reasonable and appropriate to allow a single petition for reconsideration addressing both decisions to exceed the 25 page limit set forth in § 1.429(d). We also believe that a limit of 50 pages is appropriate for such consolidated filings. Accordingly, we are allowing all interested parties to submit consolidated petitions for rule making of the *Fifth and Sixth Reports and Orders* and are increasing the page limit for such petitions to 50 pages. Parties preparing to submit petitions for reconsideration of either or both of these decisions are also advised that they may submit filings addressing only one of these decisions or may submit separate filings addressing both decisions individually, in accordance with the standard procedures for petitions for rule making. Filings that address only one decision will continue to be limited to 25 pages.

4. Accordingly, it is ordered, pursuant to §§ 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), and §§ 0.31, 0.241, 1.3, and 1.429 of the Commission's Rules, 47 CFR 0.31, 0.241, 1.3, and 1.429, that the motion of the Association for Maximum Service Television, Inc. that we permit the filing of consolidated petitions for reconsideration of the *Fifth Report and Order* and the *Sixth Report and Order* in MM Docket No. 87–268 and extend the page limit for such consolidated petitions is granted, as indicated above.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–15519 Filed 6–12–97; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 6104 and 6105

RIN 3090–AG29

Board of Contract Appeals; Rules of Procedure for Decisions Authorized Under 31 U.S.C. 3529

AGENCY: Board of Contract Appeals, GSA.

ACTION: Final rule; Correction.

SUMMARY: This document contains a correction to a final rule published in the **Federal Register** on Monday, May 12, 1997, 62 FR 25870.

EFFECTIVE DATE: May 12, 1997.

FOR FURTHER INFORMATION CONTACT: Sharon A. Kiser, Federal Acquisition Policy Division (202–501–2164).

Correction

On page 25871, third column, instruction 2. is corrected to read as follows: ''2. Part 6105 is added to read as follows:''

Dated: June 9, 1997.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 97–15544 Filed 6–12–97; 8:45 am]

BILLING CODE 6820–AL–P

Proposed Rules

Federal Register

Vol. 62, No. 114

Friday, June 13, 1997

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–21]

Establishment of Class E Airspace; Moorehead, MN, Moorehead Municipal Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Moorehead, MN. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 30 has been developed for Moorehead Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended affect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before July 22, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 97–AGL–21, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Manuel A. Torres, Air Traffic Division Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ‘‘Comments to Airspace Docket No. 97–AGL–21.’’ The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Moorehead, MN; this proposal would provide adequate Class E airspace for operators executing the GPS Runway 30 SIAP at Moorehead Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IRF procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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

* * * * *

AGL MN E5 Moorehead, MN [New]

Moorehead Municipal Airport, MN
(lat. 46°50′21″ N. long. 96°39′50″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Moorehead Municipal Airport excluding that airspace within the Fargo, ND, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on May 21, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–15534 Filed 6–12–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–24]

Modification of Class E Airspace; Eagle River, WI, Eagle River Union Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Eagle River, WI. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 04 has been developed for Eagle River Union Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended affect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before July 22, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 97–AGL–24, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Ilinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Manuel A. Torres, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ‘‘Comments to Airspace Docket No. 97–AGL–24.’’ the postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at Eagle River, WI; this proposal would provide adequate Class E airspace for operators executing the GPS Runway 04 SIAP at Eagle River Union Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendents are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a ‘‘significant regulatory action’’ under Executive Order 12866; (2) is not a ‘‘significant rule’’ under DOT

Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entitles 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

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations 914 CFR part 71) as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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

* * * * *

AGL WI E5 Eagle River, WI [Revised]

Eagle River Union Airport, WI
(lat. 45°55′54″N, long. 89°16′09″W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Eagle River Union Airport and within 2 miles each side of the 225° bearing from the airport extending from the 6.6-mile radius to 11.6 miles southwest of the airport.

* * * * *

Issued in Des Plaines, Illinois, on May 21, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–15533 Filed 6–12–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–25]

Modification of Class E Airspace; Lawrenceville, IL, Lawrenceville-Vincennes International Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Lawrenceville, IL. A Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) standard instrument approach procedure (SIAP) to Runway 18 and a VOR/DME SIAP to Runway 36 have been developed for Lawrenceville-Vincennes International Airport because of relocation of the Lawrenceville VOR/DME. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended affect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before July 22, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 97–AGL–25, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Manuel A. Torres, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ‘‘Comments to Airspace Docket No. 97–AGL–25.’’ The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at Lawrenceville, IL; this proposal would provide adequate Class E airspace for operators executing the VOR/DME Runway 18 SIAP and the VOR/DME Runway 36 SIAP at Lawrenceville-Vincennes International Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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

* * * * *

AGL IL E5 Lawrenceville, IL [Revised]

Lawrenceville-Vincennes International Airport, IL
(lat. 38°45′51″N, long. 87°36′20″W)
Mount Carmel Municipal Airport, IL
(lat. 38°36′23″N, long. 87°43′36″W)
Lawrenceville VOR/DME
(lat. 38°46′12″N, long. 87°36′14″W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Lawrenceville-Vicennes International Airport, and within 4.8 miles either side of the Lawrenceville VOR/DME 018° radial, extending from the 7-mile radius area to 7 miles northeast of the VOR/DME, and within a 6.4-mile radius of the Mount Carmel Municipal Airport, and within 2.7 miles each side of the 196° bearing from the Mount Carmel Municipal Airport, extending from the 6.4-mile radius to 7.4 miles south of the airport.

* * * * *

Issued in Des Plaines, Illinois on May 21, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–15532 Filed 6–12–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–20]

Establishment of Class E Airspace; Preston, MN, Fillmore County Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Preston, MN. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 28 has been developed for Fillmore County Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended effect of this proposal is to provide segregation of aircraft using instrument approaching procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before July 22, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 97–AGL–20, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Manuel A. Torres, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AGL–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 notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Preston, MN; this proposal would provide adequate Class E airspace for operators executing the GPS Runway 28 SIAP at Fillmore County Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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

* * * * *

AGL MN E5 Preston, MN [New]

Fillmore County Airport, MN
(lat. 43°40′36″N, long. 92°10′47″W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Fillmore County Airport, excluding that airspace within the Rochester, MN, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on May 21, 1997.

Maureen Woods,
Manager, Air Traffic Division.

[FR Doc. 97–15535 Filed 6–12–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 950609150–7080–03]

RIN 0648–AI06

Jade Collection in the Monterey Bay National Marine Sanctuary

AGENCY: Sanctuaries and Reserves Division (SRD); Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Proposed rule; notice of public availability of draft supplemental environmental impact statement/management plan.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is proposing to amend the regulations and Designation Document for the Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) to allow limited, small-scale collection of jade from the Jade Cove area of the Sanctuary. NOAA is issuing this proposed rule to provide notice to the public and invite advice, recommendations, information, and other comments from interested parties on the proposed rule and Draft Supplemental Environmental Impact Statement/Management Plan (DSEIS/MP). A public hearing will be held; a separate notice of the date and time will be published.

DATES: Comments must be received by August 12, 1997.

ADDRESSES: Comments should be sent to Scott Kathey, Monterey Bay National Marine Sanctuary, 299 Foam Street, Suite D, Monterey, California, 93940, or Elizabeth Moore, Sanctuaries and Reserves Division, National Oceanic and Atmospheric Administration, 1305 East West Highway, SSMC4, 12th Floor, Silver Spring, Maryland, 20910. Comments will be available for public inspection at the same addresses. Copies of the DSEIS/MP are available from the same addresses.

FOR FURTHER INFORMATION CONTACT: Scott Kathey at (408) 647–4251 or Elizabeth Moore at (301) 713–3141 ext. 170.

SUPPLEMENTARY INFORMATION:

I. Background

In recognition of the national significance of the unique marine environment centered around Monterey Bay, California, the Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) was designated on September 18, 1992. SRD issued final regulations, effective January 1, 1993, to implement the Sanctuary designation (15 CFR Part 922 Subpart M). The MBNMS regulations at 15 CFR 922.132(a) prohibit a relatively narrow range of activities and thus make it unlawful for any person to conduct them to cause them to be conducted.

The MBNMS regulations prohibit exploring for, developing or producing oil, gas or minerals within the Sanctuary

(15 CFR 922.132(a)(1)). Further, the regulations and Designation Document (the constitution for the Sanctuary) prohibit NOAA from issuing a permit or other approval for this activity in the Sanctuary (15 CFR 922.132(f); Designation Document, Article V). Therefore, the Sanctuary regulations and Designation Document absolutely prohibit exploring for, developing or producing oil, gas or minerals in the MBNMS.

The region within the Sanctuary known as the Jade Cove area consists of a series of small coves located south of Big Sur, near the town of Gorda. Jade (also called nephrite) occurs in veins in the serpentine bedrock formation, extending down the cliffs and into the seabed. The coastal area is very dynamic, subject to strong waves and tides, which erode the veins and sometimes release the jade. Jade is found primarily as pebbles or larger stones on the shore and seabed, and as revealed deposits in the seafloor.

For a number of years prior to the designation of the MBNMS, tourists and local residents routinely visited the Jade Cove area to explore for and collect pieces of the naturally occurring jade.

Even prior to the designation of the MBNMS, extraction of minerals from State submerged lands was prohibited by State law, unless authorized under a permit from the State. The U.S. Forest Service also prohibits the removal without a lease of any rocks or minerals within the Los Padres National Forest, which abuts the inshore boundary of the Sanctuary in the Jade Cove area.

NOAA is proposing to amend the regulations for the MBNMS to allow limited, small-scale collection of jade from the Jade Cove area of the Sanctuary (the area bounded by the 35°53′20″N latitude parallel (North Plaskett Point), the 35°53′20″N latitude parallel (Cape San Martin), from the mean high tide line seaward to the 90-foot isobath (depth line)). It appears that limited, small scale collection of loose pieces of jade (which would otherwise naturally disintegrate) from the Jade Cove area will have at most a *de minimis* effect on the jade resource, a non-living resource, and will not destroy, cause the loss of, or injure other resources or qualities of the MBNMS. It should also be noted that the MBNMS Sanctuary Advisory Council (Council) has recommended to SRD that the regulations be amended to allow jade collection. The Council has devoted considerable time during several of its monthly meetings to obtain information and public testimony, and convened a working group to review this issue. There is also public support for the proposed course of action.

The prohibition against permitting or otherwise approving the exploration, development or production of oil, gas or minerals in the Sanctuary is a term of the Designation Document for the Sanctuary. Pursuant to section 304(a)(4) of the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1434(a)(4)), the terms of designation of a national marine sanctuary may be modified only by the same procedures by which the original designation is made. Therefore, to allow limited, small-scale jade collection in the Jade Cove area of the Sanctuary, NOAA must comply with the procedures by which the Sanctuary was designated. Designations of national marine sanctuaries are governed by sections 303 and 304 of the NMSA (16 U.S.C. 1433, 1434). Section 304 requires the preparation of an environmental impact statement, State consultation, at least one public hearing, and gubernatorial non-objection to the proposal as it pertains to State waters within the Sanctuary (the proposed rule pertains entirely to State waters). This proposed rule is therefore accompanied by a Draft Supplemental Environmental Impact Statement/Management Plan, which is available at the addresses listed at the beginning of this notice. This proposed rule represents NOAA's preferred alternative as discussed in the DSEIS/MP.

There is a 60-day comment period on this proposed rule and DSEIS/MP. After the close of the comment period NOAA will prepare a Final Supplemental Environmental Impact Statement/ Management Plan (FSEIS/MP) and then issue a final rule. Further, as the amendment changes a term of designation, the Governor of California will have forty-five days of continuous session of Congress beginning on the day the final rule is issued to certify that the final rule is unacceptable, should he make such a finding. If the Governor certifies the rule as unacceptable, it will not take effect and the original prohibition will remain in effect.

NOAA issued an Advance Notice of Proposed Rulemaking (ANPR) on August 9, 1995 (60 FR 40540), to inform the public of the issue under consideration and to invite advice, recommendations, information, and other comments from interested parties. The comment period closed on September 8, 1995, with 195 comments received. Most comments were from individuals and favored unrestricted jade collection. A general summary of comments and NOAA's response to them follow.

II. Comments and Responses

(1) *Comment:* Collection of jade in the Jade Cove area has been legal and nearly unrestricted for 50 years, with only minimal restrictions from the U.S. Forest Service in place, such as no explosives, no winches, and no mechanical tools.

Response: Prior to the Sanctuary's designation, jade collection from State submerged lands without a permit was prohibited by State law. As for other existing restrictions, the Los Padres National Forest has a posted sign at the site that reads ''Prospecting, mining, or removal of any rock, mineral, or material prohibited above mean high tide level.'' The Sanctuary boundary extends from the mean high tide level seaward, and the Sanctuary regulations as currently written absolutely prohibit exploring for, developing or producing oil, gas or minerals within the Sanctuary, which encompasses jade collection in Jade Cove.

(2) *Comment:* This is a Sanctuary and the jade should be protected. No jade collection should be allowed.

Response: NOAA agrees that marine jade resources should be protected. The primary mandate of the MBNMS is to protect Sanctuary resources. However, the Sanctuary also facilitates multiple uses that are compatible with the primary mandate of resource protection. NOAA is proposing this action foremost because it appears that limited, small scale collection of loose pieces of jade (which would otherwise naturally disintegrate) from the Jade Cove area will have at most a *de minimis* effect on the jade resource, a non-living resource, and will not destroy, cause the loss of, or injure other resources or qualities of the MBNMS.

(3) *Comment:* Commercial mining should be prohibited.

Response: NOAA agrees. Existing regulations absolutely prohibit exploration, development or production of oil, gas or minerals. The amendment proposed will allow limited, small-scale jade collection, but should in no way be considered a prelude to allowance of commercial mining activities in the Sanctuary.

(4) *Comment:* Hand tools should/ should not be allowed for jade collection.

Response: NOAA believes that most tools should not be allowed as these could be used to dig into the seabed or otherwise damage Sanctuary resources or qualities. However, jade collection under the exception may be conducted with the use of a hand tool (a hand-held implement that is not greater than 36 inches in length and has no moving parts (e.g., dive knife, pry bar or abalone iron)) to maneuver and lift a loose piece of jade, and a lift bag(s) with a total lifting capacity not to exceed two hundred pounds. A vessel (except for a motorized personal watercraft (see § 922.132(a)(7)) may also be used to provide access to the authorized area. Further, NOAA may also allow additional or larger tools to collect larger pieces of loose jade under a Sanctuary permit that would be required for such collection. However, no pneumatic, mechanical, electrical, hydraulic or explosive tools would be allowed to be used to collect jade under any circumstances.

(5) *Comment:* There should be limits/no limits on the amount of jade an individual can take.

Response: NOAA believes that such restrictions as the natural situation of the area (access via a steep trail, rough water conditions, and isolated area), prohibition of tools other than hand tools, lift bags and vessels as described in the response to comment (4), and a limit that persons can only collect what they can individually carry per trip will sufficiently limit the amount of jade that will be collected, ensuring that the jade resource will not be degraded. Further, the proposed rule would require a Sanctuary permit for any collection of larger loose stones of jade not allowed to be removed under the general jade collection exception.

(6) *Comment:* NOAA wasted time and money with the Advance Notice of Proposed Rulemaking.

Response: NOAA disagrees that providing information to, and obtaining input from the public is a waste of time or money. In this instance, NOAA determined that the Advance Notice of Proposed Rulemaking (ANPR), an optional step to the rulemaking process, increased the opportunity for public comment and participation, and aided NOAA in developing the regulation proposed in this rulemaking.

(7) *Comment:* NOAA has ignored or forgotten the public comments and expert testimony provided before the Advance Notice of Proposed Rulemaking.

Response: In addition to information provided by experts and the recommendation from the Sanctuary Advisory Council, NOAA also considered the public comments received on this issue both before and after the Advance Notice of Proposed Rulemaking in determining whether to propose to amend the Sanctuary regulations to allow limited, small-scale jade collection.

(8) *Comment:* The Jade Working Group of the Sanctuary Advisory Council adopted protocols for jade collection.

Response: The Jade Working Group of the Sanctuary Advisory Council was formed to assist NOAA in resolving this issue. The Working Group met for about eight months and developed and submitted to the Council a draft list of jade collection protocols, but did not adopt or recommend any particular final plan.

(9) *Comment:* The Sanctuary Advisory Council endorsed the jade collection plan developed by the Jade Working Group.

Response: As stated above, neither the Jade Working Group nor the Sanctuary Advisory Council adopted or recommended a particular final plan. However, the Council did send a letter to NOAA recommending that the agency amend the regulations to allow limited collection of jade, while protecting the jade resource for the future. A plan submitted to the Council by a local interest group was attached to the letter and referenced as one option for managing jade collection.

(10) *Comment:* There is an ongoing mischaracterization of NOAA's actions being conducted by jade collection advocates.

Response: NOAA has received copies of an August 1995 newsletter distributed by the Free Jade Cove Committee that contains incorrect information regarding the issue and NOAA's intent. The headline of the newsletter implies that no restrictions currently exist on jade collection and that NOAA's current action will impose new restrictions, when in fact NOAA's proposed action will relax existing regulations. The newsletter also implies that NOAA ignored the Sanctuary Advisory Council's assistance and advice. To the contrary, the recommendation of the SAC to allow limited jade collection was considered, and led in part to NOAA's decision to propose to amend the Sanctuary regulations to allow limited, small-scale jade collection. As stated above, the SAC provided an option for NOAA to consider, but did not recommend any specific course of action.

III. Proposed Revised Article V of the Designation Document for the Monterey Bay National Marine Sanctuary

No changes to Articles I–IV, and Article VI of the Designation Document are proposed by NOAA. Article V of the Designation Document is proposed to be amended by revising paragraph 2. Paragraph 2 of Article V is presented in its entirety with the proposed revised language in italics.

Article V. Effect on Leases, Permits, Licenses, and Rights

In no event may the Secretary or designee issue a permit authorizing, or otherwise approve: (1) the exploration for, development of or production of oil, gas or minerals within the Sanctuary *except for limited, small-scale jade collection in the Jade Cove area of the Sanctuary (defined as the area bounded by the 35°55′20″N latitude parallel (north Plaskett Point), the 35°53′20″N latitude parallel (Cape San Martin), the mean high tide line seaward and the 90-foot isobath (depth line):* (2) the discharge of primary-treated sewage (except for regulation, pursuant to Section 304(c)(1) of the Act, of the exercise of valid authorizations in existence on the effective date of Sanctuary designation and issued by other authorities of competent jurisdiction); or (3) the disposal of dredged material within the Sanctuary other than at sites authorized by the Environmental Protection Agency (in consultation with the U.S. Army Corps of Engineers) prior to the effective date of designation. Any purported authorizations issued by other authorities after the effective date of Sanctuary designation for any of these activities within the Sanctuary shall be invalid.

End of Proposed Revised Article V of the Designation Document

IV. Summary of the Proposed Regulatory Amendment

Jade is a non-living resource of the MBNMS (see 15 CFR 922.3). Allowing limited, small-scale collection of small pieces already loose, which would otherwise naturally disintegrate, would have at most a *de minimis* effect on the jade resource. Further, it appears that collection of loose pieces of jade from the authorized area of the Sanctuary could be conducted without destroying, causing the loss of, or injuring other Sanctuary resources or qualities. Small scale, limited jade collection would be allowed under an exception to the MBNMS prohibitions, with certain conditions. Larger loose pieces of jade not allowed to be collected under the exception may be authorized to be collected under a Sanctuary permit. However, under no circumstances would NOAA allow the use of pneumatic, mechanical, electrical, hydrauic or explosive tools to collect jade.

Consequently, NOAA is proposing to amend section 922.132(a)(1) and section 922.133(c) to provide an exception to the prohibition against exploring for, developing or producing oil, gas or minerals in the Sanctuary, to allow limited, small-scale collection of jade from the Jade Cove area of the Sanctuary (defined as the area bounded by the 35°55′20″N latitude parallel (north Plaskett Point), the 35°53′20″N latitude parallel (Cape San Martin), from the mean high tide line seaward to the 90-foot isobath (depth line)). NOAA is also proposing to amend section 922.132(a)(4) to provide, for consistency, a corresponding exception to the prohibition against alteration of the seabed for collection of loose jade as described below. The proposed exception is limited to the Jade Cove area as this has been the area historically of marine jade collection.

The proposed exception also contains certain other limitations to protect Sanctuary resources and qualities. The proposed exception limits collection to jade pieces already loose from the seabed, meaning that natural storm or wave action has already completely separated the stone from the seabed. Under the general exception, no tools may be used to collect jade except (a) a hand tool, defined as a hand-held implement utilized for the collection of jade pursuant to section 922.132(a)(1) that is no greater than 36 inches in length and has no moving parts (e.g., dive knife, pry bar or abalone iron), to maneuver and lift loose jade pieces; (b) a lift bag or multiple lift bags with a combined lift capacity not to exceed 200 pounds; or (c) a vessel (except for a motorized personal watercraft (see § 922.132(a)(7)) to provide access to the authorized area. Finally, each person may collect only what that personal individually carries. The two hundred pound lift bag limit corresponds with the restriction limiting jade removal to what each person individually carries. Over one hundred pounds is considered to be a very heavy physical demand level (see Matheson, L. and Matheson, M. *Examiners Manual for the Spinal Function Sort*), and appears to correspond with the maximum amount that an average person could lift. The two hundred pound lift bag will allow safe transport to the surface of stones weighing less than 200 pounds. More important, the limitation is consistent with the overall effort to avoid jade collection that could adversely impact benthic (bottom) habitat.

Loose stones exceeding two hundred pounds would be of such mass as to be more likely to support important components of the benthic community and should not be readily made available for removal under the regulatory exception. A Sanctuary permit would be required for the collection of such loose pieces of jade. Applications for Sanctuary permits would be reviewed on a case-by-case basis under the general permit criteria contained at 15 CFR §§ 922.48 and 922.133, and would require that the applicant have all necessary approvals from other jurisdictions, including the California State Lands Commission. Preference would be given to those applicants proposed to collect such larger pieces for research or educational purposes. Any Sanctuary permits issued for jade collection would be conditioned to protect Sanctuary resources and in no circumstances will NOAA permit the use of pneumatic, mechanical, electrical, hydraulic or explosive tools to collect jade. Nor will NOAA permit any excavation or mining of the jade resource, or the collection of larger loose pieces that support important components of the benthic community.

The proposed exception for the limited, small-scale collection of loose pieces of jade does not extend to oil or gas or any other mineral. Furthermore, there is a statutory prohibition against leasing, exploration, development, or production of oil or gas in the Sanctuary.

Should this proposed regulation be adopted as final, any collection of jade in Jade Cove, which is within California State waters, will require a State permit because of the State's prohibitions against taking minerals from State submerged lands and disturbing State subsurface lands. This is consistent with 15 C.F.R. § 922.42 which provides that any activity within a specific national marine sanctuary not expressly prohibited or otherwise regulated by that sanctuary's regulations may be conducted subject to, among other things, all prohibitions, restrictions and conditions validly imposed by any other authority of competent jurisdiction. Current Federal and State restrictions on jade collection in upland areas adjacent to the Sanctuary are unaffected by this proposed rulemaking.

V. Miscellaneous Rulemaking Requirements

National Marine Sanctuaries Act

Section 304(a)(4) of the National Marine Sanctuaries Act, 16 U.S.C. 1434(a)(4), provides that the terms of designation may be modified only by the same procedures by which the original designation is made. Designations of National Marine Sanctuaries are governed by sections 303 and 304 of the NMSA, 16 U.S.C. 1433, 1434. Section 304 requires the preparation of an environmental impact statement, State consultation, at least one public hearing, and gubernatorial non-objection to the proposal as it pertains to State waters within the Sanctuary.

Section 304 of the NMSA also requires the Secretary to submit to the appropriate Congressional Committees, on the same day this notice is published, documents, including an executive summary, consisting of the terms of the proposed designation (or in this case, change thereof), the proposed regulations and the draft supplemental environmental impact statement/management plan. In accordance with section 304, the required documents are being submitted to the appropriate Congressional Committees.

National Environmental Policy Act

When changing a term of designation of a National Marine Sanctuary, section 304 of the NMSA, 16 U.S.C. 1434, requires the preparation of a draft environmental impact statement (DEIS), as provided by the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that the DEIS be made available to the public. NOAA has prepared a draft supplemental environmental impact statement/management plan for the Monterey Bay National Marine Sanctuary on the proposal to amend the regulations and Designation Document to allow limited, small-scale jade collection in the Jade Cove area of the Sanctuary. The DSEIS/MP is available at the addresses listed in the **ADDRESS** section of this proposed rule.

Executive Order 1286: Regulatory Impact

NOAA has concluded that this regulatory action is not significant within the meaning of section 3(f) of Executive Order 12866 because it will not result in:

(1) An annual effect on the economy of $100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, the environment, or public health and safety;

(2) A serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) A material alteration of the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of such recipients; or

(4) Novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Executive Order 12612; Federalism Assessment

NOAA has concluded that this regulatory action does not have sufficient federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration as follows:

The proposed rule would amend the Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) regulations to allow limited, small-scale collection of jade from an area within the Sanctuary known as Jade Cove, consistent with other applicable Federal and State law. Prior to the designation of the Sanctuary, extraction of minerals from State submerged lands was prohibited by State law, unless authorized by a permit issued by the State. The regulations implementing the designation of the Sanctuary absolutely prohibit exploration for, development or production of oil, gas or minerals in the Sanctuary. Consequently, because jade is a mineral, its collection is absolutely prohibited even if authorized by a State permit. Should this proposed regulation be adopted as final, jade could be collected within Jade Cove, which is within California State waters, provided its collection is authorized by a State permit. Without a State permit, its collection would be prohibited by the State's prohibitions against taking minerals from State submerged lands and disturbing State subsurface lands. NOAA is aware of only one small business that used the jade resource prior to the Sanctuary's designation. That business did not conduct large-scale collection or rely solely on jade from Jade Cove. Most of its jade was collected from other sources, including from upland and out of state sources. Consequently, the rule is not expected to significantly impact a substantial number of small business entities.

Accordingly, a Regulatory Flexibility Analysis was not prepared.

Paperwork Reduction Act

This proposed rule would not impose an information collection requirement subject to review and approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3500 *et seq.*

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: May 30, 1997.

David L. Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth above, 15 CFR part 922 is proposed to be amended as follows:

PART 922—[AMENDED]

1. The authority citation for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

Subpart M—Monterey Bay National Marine Sanctuary

2. Section 922.131 is amended by adding the following definition in alphabetical order to read as follows:

§ 922.131 Definitions.

* * * * *

Hand tool means a hand-held implement, utilized for the collection of jade pursuant to section 922.132(a)(1), that is no greater than 36 inches in length and has no moving parts (e.g., dive knife, pry bar or abalone iron). Pneumatic, mechanical, electrical, hydraulic or explosive tools are, therefore, examples of what does not meet this definition.

* * * * *

3. Section 922.132 is amended by revising paragraphs (a)(1) and (a)(4) introductory text and adding paragraph (a)(4)(vi) as follows:

§ 922.132 Prohibited or otherwise regulated activities.

(a) * * *

(1) Exploring for, developing or producing oil, gas or minerals within the Sanctuary except: jade may be collected (meaning removed) from the area bounded by the 35°55′20″N latitude parallel (north Plaskett Point), the 35°53′20″N latitude parallel (Cape San Martin), from the mean high tide line seaward to the 90-foot isobath (depth line) (the ''authorized area'') *provided that:*

(i) Only jade already loose from the seabed may be collected;

(ii) No tool may be used to collect jade except:

(A) A hand tool (as defined in § 922.131 of this subpart);

(B) A lift bag or multiple lift bags with a combined lift capacity of no more than two hundred pounds; or

(C) A vessel (except for motorized personal watercraft (see § 922.132(a)(7) of this subpart) to provide access to the authorized area;

(iii) Each person may collect only what that person individually carries; and

(iv) For any loose piece of jade that cannot be collected under paragraphs (a)(1) (ii) and (iii), any person may apply for a permit to collect such a loose piece by following the procedures in § 922.133 of this subpart.

* * * * *

(4) Drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary except as an incidental result of:

* * * * *

(vi) Collection of jade pursuant to § 922.132(a)(1) of this subpart.

4. Section 922.133 is amended by revising paragraph (c) to read as follows:

§ 922.133 Permit procedures and criteria.

* * * * *

(c) The Director, at his or her discretion, may issue a permit, subject to such terms and conditions as he or she deems appropriate, to conduct an activity prohibited by §§ 922.132(a) (2) through (8), and (a)(10) if the Director finds that the activity will have only negligible short-term adverse effects on Sanctuary resources and qualities and will: further research related to Sanctuary resources and qualities; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; allow the removal, without the use of pneumatic, mechanical, electrical, hydraulic or explosive tools, of loose jade from the Jade Cove area under § 922.132(a)(1)(iv) of this subpart; assist in managing the Sanctuary; or further salvage or recovery operations in connection with an abandoned shipwreck in the Sanctuary title to which is held by the State of California. In deciding whether to issue a permit, the Director shall consider such factors as: the professional qualifications and financial ability of the applicant as related to the proposed activity; the duration of the activity and the duration of its effects; the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity; the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities; the cumulative effects of the activity; and the end value of the activity. In addition, the Director may consider such other factors as he or she deems appropriate.

* * * * *

[FR Doc. 97–14787 Filed 6–12–97; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 291

[Docket No. FR–4244–A–01]

RIN 2502–AG96

Single Family Property Disposition; Advanced Notice of Proposed Rulemaking

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: This notice announces HUD's intention to issue a proposed rule to amend HUD's Single Family Property Disposition Program regulations (24 CFR part 291) for the purpose of developing innovative methods for disposing of HUD-owned single family properties in a cost efficient manner which furthers the Department's mission of providing decent, safe, and affordable housing. HUD's current regulations provide that HUD's principal method of sale of single family properties is the competitive sales method to individuals. While this method works well in some cases, HUD believes that there may be other disposition methods, which should be considered and utilized, that may better serve HUD's objectives. Specifically, HUD seeks comments that provide for innovative, efficient, and cost effective structures and procedures with respect to the disposition of the HUD inventory of single family properties, which may include but should not be limited to, bulk sales of current inventory or future acquisitions on a regional or national basis, and structures similar to joint ventures, profit-share arrangements, or private-public partnering. This notice therefore solicits public comment on this subject prior to publication of a proposed rule.

DATES: Comment Due Date: July 14, 1997.

ADDRESSES: Interested persons are invited to submit comments and responses to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW, Washington DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) responses are not acceptable. A copy of each response will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. Eastern Time at the above address).

FOR FURTHER INFORMATION CONTACT: Kitty Woodley, Director, Single Family Property Disposition Division, Office of Single Family Housing, Department of Housing and Urban Development, Room 9174, 451 Seventh Street S.W., Washington, D.C., 20410, telephone (202) 708–0740 (this is not a toll-free number). Hearing or speech-impaired individuals may access these numbers via TTY by calling the Federal Information Relay Service at 1–800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 204 of the National Housing Act (12 U.S.C. 1710) (Act) governs the FHA insurance claim process and property disposition. Specifically, section 204(g) of the Act pertains to the management and disposition of HUD-owned single family properties acquired by HUD. HUD's regulations implementing this statutory authority are contained in 24 CFR part 291. Those regulations recently were amended, first through a technical corrections rule, and second through a streamlining rule. The amendments made by the streamlining rule eliminated regulatory language that was duplicative of the authorizing statute, or language included in the regulations where HUD had discretion not to regulate. Final rules were published, respectively, on July 9, 1996 (61 FR 36260) and October 28, 1996 (61 FR 55710).

Under the statutory and regulatory authority relating to the acquisition, handling and disposal of HUD-owned property, HUD is charged with implementing a property disposition program of sales of HUD-owned single family properties along with appropriate credit terms and standards. Currently, the principal method of disposing of such properties is competitive sale to individuals. The statutory authority does not require this particular method, however, and the uses of other procedures as primary sales methods, instead of competitive sales to individuals, may have significant advantages to HUD and to the public. The purpose of this notice is to solicit public comments for developing innovative property disposition methods that are cost efficient and effective, and that further the Department's mission of providing decent, safe, and affordable housing.

HUD is pursuing alternative sales methods for its Single Family Property Disposition Program because of the anticipated increased volume of single family properties that may come into the HUD-owned inventory as a result of policy and program changes as well as downturns in various local economies and housing markets. HUD has the largest real estate-owned (REO) portfolio and operation in the nation, selling approximately 55,000 properties each year. At any one time, HUD holds approximately 29,000 properties in its inventory. The average holding time for each property is six months. While the volume of HUD-owned properties is expected to significantly increase, HUD's resources for managing and disposing of the inventory are decreasing. HUD desires to find an alternative method or methods for disposal of its REO inventory. HUD desires to find a method or methods that permit HUD to sell these properties in a more expeditious and cost efficient manner, that maximizes profit and ensures the stability of the FHA mortgage insurance fund, and allows HUD to refocus its resources in furtherance of its more central mission of providing homeownership opportunities to American families.

HUD is requesting interested members of the public to submit public comments on alternative sales methods. Specifically, HUD invites public comments which describe, in general terms, sales methods to dispose of current inventory and future acquisitions, which minimize or eliminate holding costs. In proposing alternative sales methods, HUD asks commenters to address (1) suitable financial structures and legal relationships for alternative sale arrangements, (2) any procedural and staffing efficiencies which would result from implementation of such structure, and (3) the basis for cost effectiveness of the sales arrangement. HUD will review all public comments submitted in connection with preparing the proposed rule on this subject.

Public comments received in response to this notice will be used in the development of a proposed rule that provides for innovative sales methods for the disposition of HUD-owned single family properties. The public comments also may be used in the development of a request for proposals (RFP) through which HUD will solicit and consider specific proposals on innovative, cost efficient bulk sales arrangements (which are directed toward single family properties in the current and future inventory), and by which HUD may undertake the sale of certain HUD-owned single family properties if a proposal is accepted. The occurrence of a bulk sale before issuance of a final rule amending the Single Family Property Disposition Program regulations may provide useful practical information on alternative sales procedures that will make for a better Single Family Property Disposition Program.

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this advance notice of proposed rulemaking (ANPR) under Executive Order 12866, *Regulatory Planning and Review*, issued by the President on September 30, 1993. Any changes made in this ANPR subsequent to its submission to OMB are identified in the docket file, which is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, S.W., Washington, DC 20410.

Dated: June 2, 1997.

Nicolas P. Retsinas,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 97–15670 Filed 6–12–97; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56, 57, 62, 70, and 71

RIN 1219–AA53

Health Standards for Occupational Noise Exposure

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule; extension of comment period and close of record.

SUMMARY: MSHA is extending the post-hearing comment period and close of record regarding the Agency's proposed rule for occupational noise exposure, which was published in the **Federal Register** on December 17, 1996.

DATES: Comments must be received on or before August 1, 1997.

ADDRESSES: Comments on the proposed rule may be transmitted by electronic mail, fax, or mail. Comments by electronic mail must be clearly identified as such and sent to this e-mail address: noise@msha.gov. Comments by fax must be clearly identified as such and sent to: MSHA, Office of Standards, Regulations, and Variances, 703–235–5551. Send mail comments to: MSHA, Office of Standards, Regulations, and Variances, Room 631, 4015 Wilson Boulevard, Arlington, VA 22203–1984.

MSHA will also accept written comments from the mining public in the field and district offices and technical support centers. These comments will be a part of the official rulemaking record. Interested persons are encouraged to supplement written comments with computer files or disks; please contact the Agency with any questions about format.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, phone 703-235–1910.

SUPPLEMENTARY INFORMATION: On December 17, 1996, MSHA published in the **Federal Register** (61 FR 66348) a proposed rule to revise the Agency's existing health standards for occupational noise exposure. The comment period was scheduled to close on February 18, 1997. On February 6, 1997, MSHA published in the **Federal Register** (62 FR 5554) a notice extending the comment period to April 21, 1997, and announcing that the rulemaking record would close on June 16, 1997. On March 3, 1997, MSHA published a notice in the **Federal Register** (62 FR 9404) extending the close of the record to June 20, 1997.

The Agency held six public hearings on the noise proposal: May 6 in Beaver, West Virginia; May 8 in St. Louis, Missouri; May 13, in Denver, Colorado; May 15, in Las Vegas, Nevada; May 28 in Atlanta, Georgia; and May 30 in Washington, DC. During this time frame, MSHA received several requests from the mining community to extend the time for the close of the record for an additional 60 days.

MSHA has evaluated these requests within the context of the time that the Agency has already provided for comment and testimony on the noise proposal. The Agency believes that an extension to August 1, 1997, which results in a post-hearing comment period of 60 days, is both adequate and reasonable. Further, MSHA believes that this additional 60-day period will provide sufficient time for all interested parties to review and comment on the proposal, and written comments, and testimony the Agency has received thus far. All interested members of the mining public are encouraged to submit comments prior to August 1, 1997.

Dated: June 6, 1997.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 97–15614 Filed 6–12–97; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC17

Seismic Reassessment of California Outer Continental Shelf Platforms; Republication

Editorial Note: The document set forth below was originally published at 62 FR 31538–31541, Tuesday, June 10, 1997, and is being reprinted in its entirety because of typesetting errors.

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: MMS has developed proposed regulations for the seismic reassessment of offshore platforms. This proposed rule would only apply to platforms on the Outer Continental Shelf (OCS) offshore the State of California. This proposed rule includes criteria for determining a platform's fitness through a structural analysis. Each platform on the California OCS would need to undergo a seismic assessment within 3 years of publication of the final rule. An analysis would also be triggered by damage to primary structural members, proposals to significantly increase loads, or other significant changes. Previously, MMS has allowed for good engineering judgment to determine how modifications or significant changes would affect a platform's structural integrity. This proposed rule will provide for more consistency in seismic reassessment analysis.

DATES: MMS will consider all comments received by August 11, 1997. We will begin reviewing comments then and may not fully consider comments we receive after August 11, 1997.

ADDRESSES: Mail or hand-carry written comments to the Department of the Interior; Minerals Management Service; 381 Elden Street; Mail Stop 4700; Herndon, Virginia 22070–4817; Attention: Rules Processing Team.

FOR FURTHER INFORMATION CONTACT: Lawrence Ake, Engineering and Research Branch, at (703) 787–1567.

SUPPLEMENTARY INFORMATION: Platforms installed offshore Southern California prior to the 1970's were designed and constructed according to onshore codes used at the time of their installation. In 1969, the American Petroleum Institute (API) published a document entitled ''Recommended Practice for Planning, Designing, and Constructing Fixed Offshore Platforms,'' or API RP 2A, containing guidelines developed specifically for offshore structures. The 7th edition of API RP 2A (1976) was the first version to include guidelines for seismic loading. The 19th edition of API RP 2A is currently incorporated into MMS regulations, although the latest 20th edition was published in July 1993.

Following the Loma Prieta earthquake in 1989, MMS and the California State Lands Commission (CSLC) began investigating seismic reassessment of structures located offshore Southern California. The agencies began to evaluate seismic analyses that had been performed for offshore platforms in their design phases. MMS decided to require operators of the oldest platforms, constructed before the 1976 API RP 2A 7th edition guidelines were in place, to conduct preliminary seismic analyses that are normally required for new platforms. The CSLC began a program to reassess platforms that were undergoing significant changes in operations, loads, or personnel. Experience with this process has shown the need for the development of uniform seismic design criteria.

Aware of growing MMS and CSLC interest in reassessment and the lack of credible reassessment criteria, the API funded an independent study in 1991 by a panel of four distinguished experts in matters related to seismic design. The results of the study were based on the underlying recommendation that the seismic risk offshore should be similar to that used for well-designed structures onshore. An API task group was formed to develop reassessment procedures and criteria for storm and ice loads as well as seismic loads. Its members were composed of technical experts from the offshore industry, academia, and the MMS.

Using the panel's study on seismic reassessment as a guide, the API task group developed a Supplement to the 20th edition of API RP 2A that covers all environmental loading conditions. It provides technical criteria to be used in reassessing existing structures. The criteria embrace a fitness-for-purpose evaluation coupled with the risk of structural failure and the consequences of that failure. The details of the Supplement will not be discussed here since it has already been the subject of several 1994 Offshore Technology Conference papers. The API finalized and published this Supplement document as Supplement 1 to API RP 2A in December 1996.

MMS held several workshops to involve industry, the public, regulatory agencies, and academia in the development of reassessment guidelines. MMS, CSLC, and others sponsored an international workshop on seismic reassessment of offshore structures in December 1992. In November 1993, MMS and CSLC co-sponsored a workshop on public policy issues related to the seismic reassessment of platforms offshore Southern California. In December 1993, MMS, API, and others sponsored an international workshop on reassessment for structures located in all areas for both earthquake and storm loadings. The workshops were well attended by the interested parties. Discussions on public policy issues at all three meetings resulted in consensus on the treatment of seismic reassessment at the final workshop. The technical aspects of these numerous public discussions have been incorporated into the API Supplement, and MMS has made the proposed rule consistent with these results. Proceedings are available for each of the workshops held.

MMS is moving forward with proposed seismic reassessment regulations since seismic reassessments can provide critical information about the offshore facilities in the seismically active California OCS. Consideration is also being given to incorporating the 20th edition of API RP 2A, including the Supplement, into MMS regulations instead of proceeding with this proposed rule. Commenters are urged to provide comments on the relative merits of incorporating the API documents into MMS regulations, as well as proceeding with this rule.

The proposed rule would require lessees to conduct seismic reassessments of OCS platforms located offshore the State of California within three years of final rule publication. Reassessments would also be triggered by changing circumstances at the platform such as an increase of loads on the structure, or a change from an unmanned platform to a manned platform. Most changes that trigger reassessments would have to be judged ''significant'', which the proposed rule defines as cumulative changes that cause a 10 percent decrease in the platform's loading capacity or a 10 percent increase in the platform's loads.

A manned platform would undergo an assessment to determine if it could withstand a median 1000 year seismic event; an unmanned platform's stability would be compared with the forces from a 500 year seismic event. The more stringent requirement for a manned platform is based on the higher standard needed to protect human life. Each seismic reassessment must be verified by a Certified Verification Agent (CVA) who has been approved by the MMS.

Executive Order (E.O.) 12866

This rule was reviewed under E.O. 12866. The Department of the Interior (DOI) has determined that the rule is not a significant rule under the criteria of E.O. 12866 and therefore, the rule was not reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

DOI has determined that this proposed rule will not have a significant economic effect on a substantial number of small entities. Any direct effects of this rulemaking will primarily affect the OCS lessees and operators—entities that are not small due to the technical complexities and financial resources necessary to conduct OCS activities. The indirect effects of this rulemaking on small entities that provide support for offshore activities have also been determined to be small.

Paperwork Reduction Act

This proposed rule contains a collection of information which has been submitted to the Office of Management and Budget (OMB) for review and approval under section 3507(d) of the Paperwork Reduction Act of 1995. As part of our continuing effort to reduce paperwork and respondent burden, MMS invites the public and other Federal agencies to comment on any aspect of the reporting burden. Submit your comments to the Office of Information and Regulatory Affairs; OMB; Attention Desk Officer for the Department of the Interior (OMB control number 1010–0058); 725 17th Street, NW.; Washington, D.C. 20503. Send a copy of your comments to the Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4700; 381 Elden Street; Herndon, Virginia 20170–4817. You may obtain a copy of the proposed collection of information by contacting the Bureau's Information Collection Clearance Officer at (202) 208–7744.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

The title of this collection of information is ''30 CFR 250, Subpart I, Platforms and Structures,'' OMB control number 1010–0058. The proposed rule adds the following requirements to the currently approved collection of information required in Subpart I:

- Submit a plan for analyzing the platform structure;
- Obtain Regional Supervisor approval for analysis criteria if utilizing a probabilistic analysis;
- Review of a site-specific study by an independent peer review panel; and
- Obtain and submit a CVA report.

MMS would use this information to ensure that offshore structures located on the California OCS meet today's standards for seismic loading.

Respondents are Federal OCS oil, gas, and sulphur lessees with platforms located on the California OCS. The proposed rule requires compliance once within 3 years after publication of the final rule and thereafter as applicable. The current approved reporting burden for Subpart I is 21,803 hours. MMS estimates eight new responses each year for the first three years. Additional years would average fewer than two responses. We estimate the additional annual reporting burden as a result of this rule would be 1,256 hours (157 hours per response). Based on $35 per hour, the burden hour cost to respondents is estimated to be $43,960.

In addition to the hour burden discussed above, the proposed rule would add one other cost burden associated with the collection of information. Section 250.145(e) requires respondents to obtain a final report prepared by a CVA and submit it to the Regional Supervisor. We estimate the cost of preparing that report (including the costs of conducting engineering analysis) is $100,000 per platform.

MMS will summarize written responses to this notice and address them in the final rule. All comments will become a matter of public record.

1. MMS specifically solicits comments on the following questions:

(a) Is the proposed collection of information necessary for the proper performance of MMS's functions, and will it be useful?

(b) Are the burden hour and cost of the final CVA report estimates reasonable for the proposed collection?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other forms of information technology?

2. In addition, the Paperwork Reduction Act of 1995 requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. MMS needs your comments on this item. Your response should split the cost estimate into two components:

(a) Total capital and startup cost; and

(b) Annual operation, maintenance, and purchase of services.

Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: before October 1, 1995; to comply with requirements not associated with the information collection; for reasons other than to provide information or keep records for the Government; or as part of customary and usual business or private practices.

The Paperwork Reduction Act of 1995 provides that 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.

Takings Implication Assessment

DOI determined that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, DOI does not need to prepare a Takings Implication Assessment pursuant to E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

E.O. 12988

DOI has certified that this proposed rule meets the applicable civil justice reform standards provided in sections 3(a) and 3(b)(2) of E.O. 12778.

National Environmental Policy Act

MMS has examined this proposed rulemaking and has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

Unfunded Mandates Reform Act of 1995

DOI has determined and certifies according to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rule will not impose a cost of $100 million or more in any given year on State, local, and tribal government, or the private sector.

List of Subjects in CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Surety bonds.

Dated: May 28, 1997.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, Minerals Management Service (MMS) proposes to amend 30 CFR part 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1334.

2. Section 250.145 is added to subpart I to read as follows:

§ 250.145 Seismic Reassessment of California OCS Platforms.

(a) Applicability. These requirements apply to all platforms located on the California OCS.

(b) *Definitions.* When used in this section, the terms have the following meanings:

Loss of Global Structural Stability means the point at which a structure is unable to establish equilibrium under the applied gravity loadings and induced earthquake forces.

Manned Platform means a platform that always has someone living on it.

Platform Capacity means the platform's ability to resist loading or to withstand a given maximum load.

Significant means cumulative damage or cumulative changes from the original design premise that lead to a decrease in capacity or an increase in loading greater than 10 percent.

Unmanned Platform means any platform other than a manned platform.

You means the lessee.

(c) *When must I conduct a seismic reassessment*? You must conduct a seismic reassessment of each of your California OCS platforms in its current condition by [*Insert date that is 3 years after the date the final rule is published in the* **Federal Register**]. You must also conduct a seismic reassessment when a reassessment initiator occurs. Reassessment initiators are changes in the platform status which result in a significant change in demand, capacity, or consequence of the platform's failure, such as, but not limited to:

(1) Functional or operational changes which result in significantly higher loads than in the original design (e.g., new waterflood operations, additional tanks, or crew quarters, etc.).

(2) Significant damage to primary structural members or joints found during an inspection.

(3) The availability of credible new seismic data that would indicate significantly higher loads than those used in the original design criteria.

(4) Significant changes in the original design criteria or methodologies that would negatively affect the platform. An example of this type of significant change is the evolution of the tubular joint equation.

(5) A change from an unmanned platform to a manned platform.

(d) *What are the criteria for a seismic reassessment*? Before you conduct the seismic reassessment, you must submit your plan for analyzing the structure to the Regional Supervisor for approval. In addition:

(1) For manned platforms, you must demonstrate that the platform in its current condition can withstand a median 1000-year seismic event without loss of global structural stability. The ultimate strength of all undamaged members, joints and piles must be considered and, if necessary, safety factors may be reduced to 1.0.

(2) For unmanned platforms, you must demonstrate that the platform in its current condition can withstand a median 500-year seismic event without loss of global structural stability. The ultimate strength of all undamaged members, joints, and piles must be considered, and if necessary, safety factors may be reduced to 1.0.

(3) The Regional Supervisor may accept a probabilistic analysis as an alternative to the analyses required in paragraphs (d)(1) or (d)(2) of this section. The probabilistic analysis must address the effects of uncertainty and bias in loading and resistance. Before using this method, you must obtain approval for your analysis criteria from the Regional Supervisor.

(4) Topsides and appurtenances must withstand the seismic loads from paragraphs (d)(1) or (d)(2) of this section and be in conformance with the seismic provision of API RP 2A-WSD.

(5) You must conduct a site-specific study under 30 CFR 250.139 based on soil borings and geophysical data taken on or near the platform vicinity, using the best available technology. You may use a study previously conducted. An MMS approved independent peer review panel must review the study.

(e) *Does a third party need to verify the seismic reassessment*? You must use a Certified Verification Agent (CVA) approved by the MMS using the qualification standards in § 250.132(b)(1)(ii) to verify the analyses required in paragraphs (d)(1) through (d)(4) of this section. You must submit the CVA's final report to the Regional Supervisor. It must describe the analysis process and material reviewed, summarize the findings, and include a recommendation to the Regional Supervisor. The recommendation must advise the Regional Supervisor to either accept, request modifications, or reject the reassessment.

(f) *What if my platform does not pass the seismic reassessment*? If your structure does not meet the reassessment criteria, you must contact the Regional Supervisor for approval to initiate one or more mitigation actions. Mitigation actions are modifications to the structure or to operational procedures that reduce loads, increase capacities, or reduce consequences.

Editorial Note: This document was originally published at 62 FR 31538–31541, Tuesday, June 10, 1997, and is being reprinted in its entirety because of typesetting errors.

[FR Doc. 97–15088 Filed 6–9–97; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

[SPATS No. UT–035–FOR]

Utah Regulatory Program and Utah Abandoned Mine Land Reclamation Plan

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Utah regulatory program and Utah abandoned mine land reclamation (AMLR) plan (hereinafter, the ''Utah program and plan'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions and addition of statutes pertaining to the definition for ''adjudicative proceeding''; schedule of applicant's mining law violations and remining operation violations resulting from unanticipated events or conditions; location of informal conferences; performance standards for all coal mining and reclamation operations; requirements regarding surface effects of underground coal mining, repair or compensation for damage, and replacement of water; contest of violation or amount of civil penalty; and lands and waters eligible for expenditure of AMLR funds. The amendment is intended to revise the Utah program to be consistent with SMCRA and to improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., m.d.t., July 14, 1997. If requested, a public hearing on the proposed amendment will be held on July 8, 1997. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.d.t., June 30, 1997.

ADDRESSES: Written comments should be mailed or hand delivered to James F. Fulton at the address listed below.

Copies of the Utah program and plan, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Denver Field Division.

James F. Fulton, Chief, Denver Field Division, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3320, Denver, Colorado 80202–5733.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Chief, Denver Field Division, Telephone: (303) 844–1424.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program; on June 3, 1983, the Secretary approved the Utah plan. General background information on the Utah program and plan, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program can be found in the January 21, 1981, and June 3, 1983, publications of the **Federal Register** (46 FR 5899 and 48 FR 24876). Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.15, 944.16, and 944.30. Subsequent actions concerning Utah's plan amendments can be found at 30 CFR 944.25.

II. Proposed Amendment

By letter dated May 27, 1997 (administrative record No. UT–1090), Utah submitted a proposed amendment to its program and plan pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). Utah submitted the proposed amendment in response to required program amendments at 30 CFR 944.16 (e) through (i), in response to a June 5, 1996, letter (administrative record No. UT–1083) that OSM sent to Utah in accordance with 30 CFR 732.17(c), and at its own initiative. The provisions of the coal mining and reclamation statute that Utah proposed to revise and add were: Utah Code Annotated (U.C.A.) 40–10–3(1), definition for ''adjudicative proceeding''; U.C.A. 40–10–11 (3) and (5), schedule of applicant's mining law violations and remining operation violations resulting from unanticipated events or conditions; U.C.A. 40–10–13(2), location of informal conferences; U.C.A. 40–10–17(2), (3), and (4), performance standards for all coal mining and reclamation operations; U.C.A. 40–10–18 (1) through (15), 18.1, and 18.2, requirements regarding surface effects of underground coal mining, repair or compensation for damage, and replacement of water; U.C.A. 40–10–20(2)(e), contest of violation or amount of civil penalty; and U.C.A. 40–10–25(6), lands and waters eligible for expenditure of AMLR funds.

Specifically, Utah proposes at U.C.A. 40–10–3(1) (a) and (b) that ''adjudicative proceeding'' means (a) a division or board (Division or Board of Oil, Gas and Mining) action or proceeding ''determining'' (rather than ''that determines'') the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, permit, or license; ''or (b) judicial review of a division or board action or proceeding specified in Subsection (a).''

Utah proposes at U.C.A. 40–10–11(3) that an applicant shall file with his permit application a schedule listing, among other things, any and all notices of violation of ''the Surface Mining Control and Reclamation Act of 1977 or its implementing regulations.'' This proposed rule further specifies that the Division shall not issue a permit where the above-described schedule or other information available to the Division indicates that any surface coal mining operation owned or controlled by the applicant is currently in violation of U.C.A. 40–10 or other laws ''and regulations'' referred to in U.C.A. 40–10–11(3). Utah proposes at U.C.A. 40–10–11(5)(a) that after October ''24'' (rather than ''14''), 1992, the permit issuance prohibition of U.C.A. 40–10–11(3) does not apply if the violation resulted from an unanticipated event or condition that occurred at a surface coal mining operation on lands eligible for remining under a permit held by the person making the application.

Utah proposes at U.C.A. 40–10–13(2)(b) that informal conferences to discuss objections to proposed initial or revised permit applications shall be conducted in accordance with the procedures described in ''this'' subsection (b) and that the conference ''shall,'' not ''may,'' be held in the locality of the coal mining and reclamation operation if requested within a reasonable time after written objections or request for an informal conference are received by the Division.

Utah proposes in the coal mining and reclamation operation performance standards at U.C.A. 40–10–17(2)(j)(ii)(B), (2)(p) (ii) and (iii), (3) (a) and (c), and (4) and (4) (a), and (d) to clarify that other rules that are cited and are referred to as ''this subsection'' are specific rule subsections included within U.C.A. 40–10–17.

Utah proposes at U.C.A. 40–10–18 (1) through 15(b), 18.1, and 18.2, various changes in punctuation, recodification, referenced rule citations, sentence structure, and word choice that are apparently intended to be editorial rather than substantive in their effect. Utah proposes at U.C.A. 40–10–18(15)(c) that ''[s]ubject to the provisions of Section 40–10–29, the permittee shall promptly replace any state-appropriated water in existence prior to the application for a surface coal mining and reclamation permit, which has been affected by contamination, diminution, or interruption resulting from underground coal mining operations.''

Utah proposes at U.C.A. 40–10–20(2)(e)(ii) that, if an operator fails to forward the amount of the civil penalty for a violation to the Division within 30 days of the civil penalty for a violation to the Division within 30 days of receipt of the results of the informal conference, the operator waives any opportunity for further review of the ''fact of the'' violation or to contest the ''amount of the civil penalty assessed for the'' violation.

Utah proposes at U.C.A. 40–10–25(6)(b) that AMLR funds available under U.C.A. 40–10–25 may be used for reclamation when a bond or deposit for a ''surface coal mining operation,'' rather than a ''coal surface mining operation,'' on lands eligible for remining is forfeited and the amount of the bond or deposit is not sufficient to provide for adequate reclamation.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h) and 30 CFR 884.15(a), OSM is seeking comments on whether the proposed amendment satisfies the applicable program and plan approval criteria of 30 CFR 732.15 and CFR 884.14. If the amendment is deemed adequate, it will become part of the Utah program and plan.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Denver Field Division will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.d.t., on June 30, 1997. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. 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).

2. 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 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 or AMLR plans and plan amendments since each such program or plan 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 the Federal regulations at 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. Decisions on proposed State AMLR plans and amendments are based on a determination of whether the submittal meets the requirements of title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR Parts 884 and 888.

3. 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)).

No environmental impact statement is required for this rule since agency decisions on proposed State AMLR plans and amendments are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

4. 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.*).

5. 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 that 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.

6. 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 944

Abandoned mine reclamation programs, Intergovernmental relations, Surface mining, Underground mining.

Dated: June 5, 1997.

Peter A. Rutledge,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 97–15646 Filed 6–12–97; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH104–2b; FRL–5840–9]

Approval and Promulgation of Implementation Plans; Ohio Ozone Maintenance Plan

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule; Extension of the public comment period.

SUMMARY: On May 14, 1997 USEPA published a direct final rule (62 FR 26396) approving, and an accompanying proposed rule (62 FR 26463) proposing to approve a revision submitted on July 9, 1996 and January 31, 1997, to the ozone maintenance plans for the Dayton-Springfield Area (Miami, Montgomery, Clark, and Greene Counties), Toledo Area (Lucas and Wood Counties), Canton area (Stark County), Ohio portion of the Youngstown-Warren-Sharon Area (Mahoning and Trumbell Counties), Columbus Area (Franklin, Delaware, and Licking Counties), Cleveland-Akron-Lorain Area (Ashtabula, Cuyahoga, Lake, Lorain, Medina, Summit, Portage, and Geauga Counties), Preble County, Jefferson County, Columbiana and Clinton Counties. The revision was based on a request from the State of Ohio to revise the federally approved maintenance plan for those areas to provide the state and the affected areas with greater flexibility in choosing the appropriate ozone contingency measures for each area in the event such a measure is needed. The USEPA is announcing a 60 day extension of the public comment period on the May 14, 1997 proposed rule. In the rules section of this **Federal Register**, USEPA is delaying the effective date of the related final rule to allow for a 60 day extension of the public comment period on these maintenance plans.

DATES: Written comments on the May 14, 1997 proposed rule must be received by August 12, 1997.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulations Development Section, Air Programs Branch (AR–18), at the address below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 5, Regulation Development Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Paskevicz, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Telephone: (312) 886–6084.

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

Dated: June 5, 1997.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 97–15415 Filed 6–12–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA–076–5022b; FRL–5841–7]

Approval and Promulgation of Air Quality Implementation Plans; Virginia: Determination of Attainment of Ozone Standard and Determination Regarding Applicability of Certain Requirements in the Richmond Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to determine that the Richmond ozone nonattainment area has attained the National Ambient Air Quality Standard (NAAQS) for ozone and that certain reasonable further progress and attainment demonstration requirements, along with certain related requirements, of Part D of Title I of the Clean Air Act are not applicable for so long as this area continues to attain the ozone standard. In the Final Rules section of this **Federal Register**, EPA is making these determinations without prior proposal. A detailed rationale for the action is set forth in the direct final rule and accompanying technical support document. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and address the comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this notice. Any parties interested in commenting on this notice should do so at this time.

DATES: Comments must be received in writing by July 14, 1997.

ADDRESSES: Written comments may be mailed to David L. Arnold, Chief, Ozone/Carbon Monoxide, and Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency—Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Persons interested in examining these documents should schedule an appointment with the contact person (listed below) at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, Ozone/Carbon Monoxide and Mobile Sources Section (3AT21), U.S. Environmental Protection Agency—Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, or by telephone at: (215)566–2179. Questions may also be addressed via e-mail, at the following address: Cripps.Christopher@ epamail.epa.gov.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 5, 1997.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 97–15568 Filed 6–12–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA062–5021 and VA080–5021; FRL–5841–6]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Redesignation Request, Maintenance Plan and Mobile Emissions Budget for the Richmond Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a redesignation request and two State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia. On July 26, 1996, the Commonwealth of Virginia's Department of Environmental Quality, submitted a maintenance plan as a revision to the SIP and a request to redesignate the Richmond moderate ozone nonattainment area from nonattainment to attainment. EPA's proposed action is based upon the Commonwealth's submittal satisfying all five criteria for redesignation in the Clean Air Act (the Act), including the fact that the Richmond area has at least three years of complete, quality-assured ambient air monitoring data which demonstrate that the National Ambient Air Quality Standard (NAAQS) for ozone has been attained. On July 30, 1996, the Commonwealth submitted another revision to the SIP modifying the mobile emission budgets in the Richmond area maintenance plan in support of the area's transportation plans for the period after the year 2015. EPA is proposing to redesignate the Richmond ozone nonattainment area from nonattainment to attainment and to approve the maintenance plan and mobile emissions budget as revisions to the Virginia SIP. The SIP revisions establish a maintenance plan for Richmond including contingency measures which provide for continued attainment of the ozone NAAQS until the year 2007 and adjust the motor vehicle emissions budget established in the maintenance plan for Richmond to support the area's long-range transportation plans in the horizon years 2015 and beyond. EPA is proposing to approve Virginia's redesignation request and maintenance plan for the Richmond area because the relevant requirements set forth in the the Act, as amended in 1990, have been met. This action is being taken under section 110 of the Act.

DATES: Comments must be received on or before July 14, 1997.

ADDRESSES: Comments may be mailed to David Arnold, Chief, Ozone/CO & Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107 and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Kristeen Gaffney, Ozone/Carbon Monoxide and Mobile Sources Section (3AT21), USEPA—Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, or by telephone at: (215) 566–2092. Questions may also be addressed via e-mail, at the following address:

Gaffney.Kristeen@epamail.epa.gov [Please note that only written comments can be accepted for inclusion in the docket.]

SUPPLEMENTARY INFORMATION:

I. Background

The Richmond nonattainment area was designated under section 107 of the 1977 Clean Air Act (1977 Act) as nonattainment with respect to the ozone NAAQS on March 3, 1978. The 1977 Act required nonattainment areas to develop SIPs with sufficient control measures to expeditiously attain and maintain the standard. EPA approved the ozone SIP submitted by the Commonwealth on January 12, 1979, as meeting the requirements of section 110 and part D of the 1977 Act. In its SIP, Virginia projected that the Richmond area would attain the standard by December 31, 1982, but the area failed to attain the standard by that date. On November 15, 1990, the Clean Air Act Amendments of 1990 (Act) were enacted. The nonattainment designation of the Richmond area continued by operation of law according to section 107(d)(1)(C)(i) of the Act. Furthermore, it was classified by operation of law as moderate nonattainment for ozone pursuant to section 181(a)(1) of the Act. The Richmond nonattainment area consists of the following counties: Richmond, Henrico, Chesterfield, Colonial Heights, Hopewell, Hanover and portions of Charles City County.

Under section 107 (d)(3)(E) of the Act, nonattainment areas may be redesignated to attainment if sufficient air quality data are available to warrant the redesignation and the area meets the Act's other redesignation requirements for nonattainment areas.

The Commonwealth submitted a redesignation request and maintenance plan on November 12, 1992 to redesignate the Richmond area from nonattainment to attainment, based on ambient monitoring from 1989 to 1991 that indicated that the area was attaining the ozone standard. EPA proposed approval of the redesignation request and maintenance plan on August 17, 1993 (58 FR 43609) but subsequently proposed and finally disapproved the submittal on January 31, 1994 and May 3, 1994, respectively, based on violations of the ozone standard that occurred during the 1993 ozone season (59 FR 4263 and 59 FR 22757).

The Richmond ozone nonattainment area has more recently attained the ozone NAAQS, based on air quality data from 1993 to 1996. In an effort to comply with the Act and to ensure continued attainment of the NAAQS, Virginia submitted a 10 year ozone maintenance plan on July 26, 1996 for the Richmond area as a SIP revision.

II. Review of State Submittal

According to section 107(d)(3)(E) of the Act, five specific requirements must be met in order for EPA to redesignate an area from nonattainment to attainment:

1. The area must have attained the applicable NAAQS;
2. The area must have met all relevant requirements under section 110 and part D of the Act;
3. The area must have a fully approved SIP under section 110(k) of the Act;
4. The air quality improvement must be permanent and enforceable; and
5. The area must have a fully approved maintenance plan pursuant to section 175A of the Act.

The Commonwealth's redesignation request for the Richmond area included information and documentation sufficient for EPA to determine that all five requirements of section 107, noted above, have been met. Following is a brief description of how each of these requirements has been fulfilled. Because the maintenance plan is a critical element of the redesignation request, EPA will discuss its evaluation of the maintenance plan under its analysis of the redesignation request. A Technical Support Document (TSD) has been prepared by EPA for this rulemaking action. The TSD is available for public inspection at the EPA Regional Office listed in the **ADDRESSES** section of this document.

1. Attainment of the Ozone NAAQS

Virginia's request is based on an analysis of quality assured ambient air quality monitoring data which is relevant to the maintenance plan and to the redesignation request. The method for determining attainment of the ozone NAAQS is contained in 40 CFR part 50.9 and appendix H to that section. The simplest method by which expected exceedances are calculated is by averaging actual exceedances of the 0.12 parts per million ozone NAAQS at each monitoring site over a three year period. An area is considered in attainment of the standard if the average annual number of expected exceedances is less than or equal to 1.0. Ambient air quality data recorded in the Richmond area, between the years 1993–1995 shows an expected exceedance rate of 1.0 per year and attainment of the ozone NAAQS. The data for these years meets EPA's completeness criteria of 75% or greater data capture. Furthermore, the area remained free of violations during the 1996 ozone season. The Commonwealth has committed to continue monitoring in this area in accordance with 40 CFR part 58.

2. The Area Has Met All Applicable Requirements Under Section 110 and Part D

As previously stated, EPA fully approved the Commonwealth's SIP for the Richmond area as meeting the requirements of section 110(a)(2) and part D of the 1977 Act. The amended Act, however, modified section 110(a)(2) and, under part D, revised section 172 and added new requirements for all nonattainment areas. Therefore, for purposes of redesignation, EPA has reviewed the SIP to ensure that it contains all measures that were due under the Act as of July 26, 1996, the date the Commonwealth submitted its redesignation request.

2.A. Section 110 Requirements

Although section 110 of the 1977 Act was amended in 1990, the Virginia SIP for the Richmond area meets the requirements of section 110(a)(2) of the amended Act. A number of the requirements did not change in substance and, therefore, EPA believes that the pre-amendment SIP met these requirements. As to those requirements that were amended, see 57 FR 27936 and 23939 (June 23, 1993), many are duplicative of other requirements of the Act.

EPA has analyzed the SIP and determined that it is consistent with the requirements of section 110(a)(2) of the Act. It contains enforceable emissions limitations, it requires monitoring, compiling, and analyzing ambient air quality data, it requires preconstruction review of new major stationary sources and major modifications to existing ones, it provides for adequate funding, staff and associated resources necessary to implement its requirements, and requires stationary source emissions monitoring and reporting.

2.B. Part D Requirements

Before an area may be redesignated to attainment, it also must have fulfilled applicable requirements of part D due as of the date of the Commonwealth's redesignation request. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, regardless of classification. Subpart 2 of part D establishes additional requirements for nonattainment areas classified under table 1 of section 181(a). Specific requirements of subpart 2 may override subpart 1's general provisions (57 FR 13501, April 16, 1992). Since the Richmond area is classified moderate, the Commonwealth must meet the applicable requirements of subpart 1, specifically sections 172(c) and 176, and the applicable requirements of subpart 2 of part D for moderate areas.

2.B.1. Subpart 1 of Part D—Section 172(c) Provisions

Under section 172(b), the section 172(c) requirements are applicable as determined by the Administrator, but must be met no later than 3 years after an area has been designated as nonattainment under the amended Act. Furthermore, as noted above, some of these section 172(c) requirements are superseded by more specific requirements in subpart 2 of part D. For moderate ozone nonattainment areas, the section 172(c)(1) reasonably available control measures requirement was superseded by section 182(a)(2) reasonably available control technology (RACT) requirements. Section 182(a)(2) requires moderate ozone nonattainment areas that were previously designated nonattainment to submit RACT corrections. Because section 182(a)(2) supersedes the RACT requirements in subpart 1 of part D, the RACT correction requirement is discussed with other RACT requirements below in section 2.B.3.

Since the Richmond area has attained the ozone NAAQS, the reasonable further progress (RFP) requirement, attainment demonstration and 179(c)(9) contingency measure SIPs are no longer relevant. A May 10, 1995 memorandum from John Seitz to Regional Division Directors entitled ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the National Ambient Air Quality Standard'' indicates that the RFP, attainment demonstration and 179(c)(9) contingency measure SIPs would not be required for approval of a redesignation request for those areas which the EPA determines have attained the ozone NAAQS. Based on this policy, on February 25, 1997, EPA published a determination that the Richmond area has attained the NAAQS [62 FR 8389]. In a separate rulemaking action in today's **Federal Register**, EPA is taking final approval action to waive the RFP and attainment demonstration requirements for the Richmond area.

The section 172(c)(3) emission inventory requirement has been met by the Commonwealth's submission and EPA's approval on September 16, 1996 [61 FR 48629], of the 1990 base year emission inventory required by section 182(a)(1).

As for the section 172(c)(5) NSR requirement, the EPA has determined that areas being redesignated need not comply with the NSR requirement prior to redesignation provided that the area demonstrates maintenance of the NAAQS without part D NSR in effect. A memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment'', fully describes the rationale for this view, and is based on the Agency's authority to establish de minimis exceptions to statutory requirements. See Alabama Power Co. v. Costle, 636 F. 2d 323, 360–61 (D.C. Cir. 1979). As discussed below, the Commonwealth has demonstrated that the Richmond area will be able to maintain the NAAQS without part D NSR in effect and, therefore, the Commonwealth need not have a fully-approved part D NSR program prior to approval of the redesignation request for Richmond. Once the area is redesignated to attainment, part C, the prevention of significant deterioration (PSD) program, which has been delegated to Virginia, will become effective immediately. The PSD program was delegated to Virginia on June 3, 1981, and amended on September 20, 1991.

Finally, for purposes of redesignation, the Virginia SIP was reviewed to ensure that all requirements of section 110(a)(2), containing general SIP elements, were satisfied. As noted above, the EPA believes the SIP satisfies all of those requirements.

2.B.2. Subpart 1 of Part D—Section 176(c) Conformity Provisions

Under section 176(c) of the Act, states were required to submit revisions to their SIPs that include criteria and procedures to ensure that Federal actions conform to the air quality planning goals in the applicable SIPs. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. or the Federal Transit Act (''transportation conformity''), as well as all other Federal actions (''general conformity''). Congress provided for the State revisions to be submitted one year after the date of promulgation of final EPA conformity regulations. EPA promulgated final transportation conformity regulations on November 24, 1993 (58 FR 62188) and final general conformity regulations on November 30, 1993 (58 FR 63214). These conformity rules require that the states adopt both transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under section 175A of the Act. Pursuant to 40 CFR 51.396 of the transportation conformity rule and 40 CFR 51.851 of the general conformity rule, the Commonwealth of Virginia was required to submit a SIP revision containing transportation conformity criteria and procedures consistent with those established in the Federal rule by November 25, 1994. Similarly, Virginia was required to submit a SIP revision containing general conformity criteria and procedures consistent with those established in the Federal rule by December 1, 1994. Virginia submitted both the transportation conformity and general conformity SIP revisions to EPA in January of 1997. EPA is reviewing these SIP revisions and will take rulemaking action on them at a future date.

Although this redesignation request was submitted to EPA after the due dates for the SIP revisions for transportation conformity [58 FR 62188] and general conformity [58 FR 63214] rules, EPA believes it is reasonable to interpret the conformity requirements as not being applicable requirements for purposes of evaluating the redesignation request under section 107(d). The rationale for this is based on a combination of two factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the Act continues to apply to areas after redesignation to attainment. Therefore, the Commonwealth remains obligated to implement transportation and general conformity rules even after redesignation and would risk sanctions for failure to do so. While redesignation of an area to attainment enables the area to avoid further compliance with most requirements of section 110 and part D, since those requirements are linked to the nonattainment status of an area, the conformity requirements apply to both nonattainment and maintenance areas. Second, EPA's federal conformity rules require the performance of conformity analyses in the absence of EPA approval of state-adopted rules. Therefore, a delay in approving the Commonwealth's rules into the SIP does not relieve an area from the obligation to implement conformity requirements.

Because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if state rules are not yet adopted or approved into the SIP, EPA believes it is reasonable to view these requirements as not being applicable requirements for purposes of evaluating a redesignation request.

For the reasons just discussed, the EPA believes that the ozone redesignation request for the Richmond area may be approved notwithstanding the lack of fully approved Commonwealth transportation and general conformity rules.

2.B.3. Subpart 2 of Part D—Section 182 Provisions for Ozone Nonattainment Areas

Richmond is a moderate ozone nonattainment area and is subject to section 182(a), 182(b) and 182(f) requirements. Under subpart 2, Richmond is required to have met the requirements of section 182(a) (1), (2) and (3), section 182(b) (1), (2), (3) and (4), and section 182(f). The following discussion describes each of these requirements.

EPA approved Virginia's emission inventory requirement under section 182(a)(1) on September 16, 1996 [61 FR 48629]. The section 182(2)(B) motor vehicle inspection and maintenance (I/M) requirement is superseded by the section 182(b)(4) requirement discussed below. The Commonwealth need not comply with the requirements of section 182(a) concerning revisions to the part D NSR program in order for the Richmond area to be redesignated for the reasons explained above under the section 172(c)(5) requirement. Section 182(a)(3)(A) requires submission of periodic inventories every three years from 1990 until the area is redesignated attainment. The maintenance plan for Richmond contains a full emissions inventory for the attainment year 1993. Because the attainment year is the same as the year the first periodic inventory came due, the maintenance plan satisfies this requirement. The emission statement SIP required by section 182(a)(3)(B) was approved on May 2, 1995 (60 FR 21451). The RFP and attainment demonstration requirements of section 182(b)(1) will no longer be applicable, as discussed previously, since the area has attained the ozone NAAQS.

Section 182(a)(2) requires moderate ozone nonattainment areas that were previously designated nonattainment to submit RACT corrections based on requirements in effect prior to enactment of the 1990 amendments to the Act. Furthermore, sections 182(b)(2) (A),(B) and (C) require moderate and above areas to adopt standards for all sources covered by any Control Technique Guideline (CTG) document issued by the Administrator after 1990 and before the area is required to attain the standard; all sources covered by any CTG before the date of enactment of the 1990 amendments; and all sources not subject to a CTG. In addition, areas newly designated under the 1990 amendments as ozone nonattainment areas are required to adopt RACT rules consistent with those previously designated nonattainment. These RACT requirements make nonattainment areas that previously were exempt from RACT requirements ''catch up'' to those nonattainment areas that became subject to those requirements during an earlier period, and therefore, is known as the RACT catch-up requirement. Virginia submitted RACT corrections as SIP revisions on May 14, 1991 and June 20, 1991. Among the regulations submitted in this SIP revision was a provision (Rule 4–4) that formed the legal basis for imposing RACT on all individual major VOC sources subject to RACT in the Richmond nonattainment area not covered by an existing state adopted VOC control regulation. The RACT correction SIP was approved by EPA on March 31, 1994 [59 FR 15117]. To implement Rule 4–4, the Commonwealth must submit to EPA a SIP revision for the RACT determination and enforceable documents for all major VOC sources not otherwise controlled under existing VOC regulations.

Because Rule 4–4 imposed RACT on all major VOC sources in the Richmond area on an individual basis, this rule partially satisfied the RACT catch-up requirement. On May 6, 1992, Virginia submitted a SIP revision expanding the geographic boundaries of the VOC emissions control area to coincide with the revised boundaries of the Richmond ozone nonattainment area resulting from the 1990 Clean Air Act Amendments. This SIP was approved by EPA on October 19, 1994 (59 FR 52701). To complete the RACT correction and catch up requirements under sections 182(a)(2) and 182(b)(2)(A), (B) and(C), EPA must approve into the SIP any source specific RACT determinations for any non-CTG major source of VOCs identified under Rule 4–4 prior to final approval of the redesignation request. Virginia has identified 10 sources required to submit source specific RACT SIP revisions under rule 4–4. EPA has received SIP revisions for each of these facilities and is currently preparing rulemaking actions for them.

Section 182(b)(3) requires states to submit gasoline vapor recovery rules (known as Stage II). EPA approved Virginia's Stage II program on June 23, 1994 (59 FR 32353).

Sections 182(a)(2)(b)(i) and 182 (b)(4) of the Act require moderate nonattainment areas to submit a SIP revision that includes any provisions necessary to provide for a vehicle inspection and maintenance (I/M) program of no less stringency than either the program that was in the SIP at the time of passage of the 1990 amendments to the Act or the minimum basic program requirements, whichever is more stringent. Virginia has not implemented an I/M program in the Richmond area. On January 5, 1995 EPA published a rule [60 FR 1735] allowing areas subject to the Act's basic I/M requirements and that otherwise would qualify for and ultimately obtain approval of redesignation requests to defer adoption and implementation of I/M, provided they submit a SIP that contains the following four elements:

(1) legal authority for a basic I/M program meeting all of the requirements of Subpart S of 40 CFR part 51, such that implementing regulations can be adopted without further legislation;

(2) a request to place the I/M plan in the contingency measures portion of the maintenance plan upon redesignation as described in the fourth element below;

(3) a contingency measure to go into effect as soon as a triggering event occurs, consisting of a commitment by the Governor or the Governor's designee to adopt regulations to implement the I/M program in response to the specified triggering event; and

(4) a commitment that includes an enforceable schedule for adopting and implementing the I/M program, including appropriate milestones in the event the contingency measure is triggered (milestones will be defined by states in terms of months since the triggering event).

Virginia has satisfied the first requirement. On October 25, 1996, the Commonwealth submitted the legislative authority for adopting regulations for a basic I/M program in the Richmond nonattainment area. The maintenance plan contains provisions satisfying the other three requirements. The maintenance plan relies on I/M as a contingency measure, specifies triggering events and contains a schedule for adoption and implementation in the event a trigger occurs. Refer to section 5.D of this notice for further detail.

Section 182(f) requires states with areas classified as moderate and above to impose the same control requirements for major stationary sources of oxides of nitrogen (NO_X) as apply to major stationary sources of VOCs [i.e., NO_X RACT]. Section 182(f) further provides that these NO_X requirements do not apply to areas outside of the ozone transport region if

EPA determines that additional reductions of NO_X would not contribute to attainment in such areas, which could be satisfied through a demonstration of clean air quality data and/or a modeling demonstration. On December 18, 1995, the Commonwealth submitted a NO_X exemption petition to exempt the Richmond ozone nonattainment area from the NO_X RACT requirements based upon ambient air quality monitoring data for 1993, 1994 and 1995 which met the NAAQS for ozone without any additional reductions of NO_X. EPA proposed approval of the NO_X waiver for the Richmond area on March 12, 1996 [61 FR 11170]. Although EPA is proposing approval of the Richmond redesignation request in today's action, EPA must complete final rulemaking action on the NO_X waiver before the area can be finally redesignated. As long as Richmond remains a designated nonattainment area for ozone, this NO_X RACT exemption is contingent upon future monitoring that demonstrates continued attainment of the ozone NAAQS. Furthermore, this waiver in no way insulates or alleviates the Commonwealth of Virginia from any future obligations to secure additional NO_X reductions should technical evidence, including but not limited to that which may result from the Ozone Transport and Assessment Group (OTAG) process, indicate that such reductions are required because NO_X emissions generated in Virginia interfere with the ability of another state or legally responsible jurisdiction to attain and maintain the NAAQS for ozone.

3. Fully Approved SIP Under Section 110(k) of the Act

EPA has determined that the Commonwealth of Virginia has a fully approved SIP under section 110(k), which also meets the applicable requirements of section 110 and Part D as discussed above. Therefore, the redesignation requirement of section 107(d)(3)(E)(ii) has been met.

4. Improvement in Air Quality Due to Permanent and Enforceable Measures

The Commonwealth must be able to reasonably attribute air quality improvements in the area to emission reductions which are permanent and enforceable. Attainment resulting from temporary reductions in emission rates or unusually favorable meteorological conditions does not qualify for redesignation.

Several enforceable control measures have come into place since Richmond was designated nonattainment under the 1990 amendments. Significant reductions in ozone precursor emissions are attributed to federal mobile source emission control programs. Specifically, VOC reductions occurred due to the Federal Motor Vehicle Control Program (FMVCP) due to the mandatory lowering of fuel volatility and automobile fleet turnover. Effective in 1993, the Reid Vapor Pressure (RVP) of gasoline decreased from 9.9 pounds per square inch (psi) to 7.8 psi in the Richmond area reducing VOC emissions from gasoline. Beginning in 1995, federal reformulated gasoline (RFG) was implemented in Richmond as a replacement to low RVP gasoline, further reducing VOC emissions from gasoline.

As a starting point for the redesignation request, Virginia developed a design year emissions inventory representing the ''worst case'' emissions scenario that contributes to ozone violations. The design year chosen by Virginia for Richmond is 1988, a year that was particularly conducive to ozone violations in eastern U.S. nonattainment areas. The maintenance plan contains a comprehensive emissions inventory of ozone precursors, VOCs, NO_X and carbon monoxide (CO), for the year 1988 to establish the amount of emission reductions achieved to reach attainment with the ozone NAAQS in the 1993 attainment year.

The Commonwealth demonstrated that point source VOC emissions were not artificially low due to local economic downturn during the period in which Richmond air quality came into attainment. Reductions due to decreases in production levels or from other unenforceable scenarios such as voluntary reductions were not included in the determination of the emission reductions.

EPA finds that the combination of measures contained in the SIP and federal measures have resulted in permanent and enforceable reductions in ozone precursors that have allowed Richmond to attain the NAAQS, and therefore, that the redesignation criterion of section 107(d)(3)(E)(iii) has been met.

5. Fully Approved Maintenance Plan Under Section 175A

Section 175A of the Act sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the Commonwealth must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation, adequate to assure prompt correction of any air quality problems. EPA is approving the Virginia maintenance plan for the Richmond area because EPA finds that Virginia's submittal meets the requirements of section 175A of the Act as discussed below.

5. A. Emissions Inventories

The Commonwealth developed an attainment emissions inventory to identify the level of emissions sufficient to achieve the ozone NAAQS. The maintenance plan contains comprehensive inventories for the years 1993, 1999 and 2007 prepared according to EPA guidance for ozone precursors, VOCs, NO_X, and CO emissions to demonstrate attainment and maintenance for Richmond. The inventories include area, stationary, non-road mobile and mobile sources. The year 1993 was used for the attainment year inventory because it was the first year of the three year period on which the redesignation request was based. The plan includes a demonstration that emissions will remain below the 1993 attainment year levels for a 10 year period (2007) and provides an interim year inventory, as required by EPA guidance, for the year 1999.

The Commonwealth has demonstrated that emissions for ozone precursors through the year 2007 will remain below the 1993 attainment year levels because of permanent and enforceable measures, while allowing for growth in population and vehicle miles traveled (VMT).

The following table summarizes the average peak ozone season weekday VOC, NO_X, and CO emissions for the major anthropogenic (non-biogenic) source categories for the 1993 attainment year inventory and projected 1999 and 2007 inventories.

RICHMOND AREA EMISSIONS SUMMARY

Emissions (tons per year)	1993	1999	2007
VOCs:			
Point sources	49.64	53.25	60.05
Area sources	70.34	64.48	67.97
Mobile sources [1]	40.41	35.94	31.86
Subtotal	160.39	153.67	159.88
NO_X:			
Point sources	152.21	156.83	145.99
Area sources	29.49	31.36	33.54
Mobile sources	59.56	52.85	61.07
Subtotal	241.26	241.04	240.60
CO:			
Point sources	27.37	28.17	29.47
Area sources	177.22	188.60	202.01
Mobile sources	309.13	220.82	246.64
Subtotal	513.72	437.59	478.12
Totals	915.37	832.30	878.60

[1] The mobile source VOC and NO_X estimates include emissions safety margins. A safety margin exists when the total emissions (stationary, mobile, area) projected for the attainment year (or years of a maintenance plan) are less than the emissions level necessary to demonstrate attainment or maintenance. That difference in emissions constitutes a safety margin. In this case, Virginia allocated such safety margins to the on-road portion and inflated the mobile emissions budget to satisfy conformity requirements.

5.B. Demonstration of Maintenance

Virginia attributes the projected reductions of VOC emissions to the following national control measures: FMVCP (Tier 1); RFG (on-road and non-road), Stage II gasoline dispensing systems and pending EPA rules regulating emissions from Consumer/Commercial Solvents reformulations; Architectural/Industrial Maintenance Coatings reformulation; and Automobile Refinishing. The Commonwealth predicts future NO_X emission reductions from FMVCP Tier 1, RFG (Phase 2) and source specific seasonal NO_X emission limits (emission caps) on two point sources of NO_X in the nonattainment area. EPA believes these measures will contribute significant future emissions reductions that will help keep the Richmond area below the level of the 1993 attainment year inventory and in attainment of the ozone NAAQS. The TSD prepared for this rulemaking contains further detail on these emission control strategies.

5.C. Verification of Continued Attainment

Continued attainment of the ozone NAAQS in Richmond depends, in part, on the Commonwealth of Virginia's efforts toward tracking indicators of continued attainment during the maintenance period. The Commonwealth of Virginia will track the status and effectiveness of the maintenance plan by updating the emissions inventory annually and through periodic evaluations. Virginia has committed to develop and submit to EPA comprehensive tracking inventories every three years during the maintenance period. The Commonwealth of Virginia will acquire source emissions data through the annual emission statements program; continue to monitor ambient ozone levels in accordance with 40 CFR part 58 and continue to follow appropriate quality assurance and quality control procedures and enter the data into AIRS.

5.D. Contingency Plan

The level of VOC and NO_X emissions in Richmond will largely determine its ability to stay in compliance with the ozone NAAQS. Despite the Commonwealth of Virginia's best efforts to demonstrate continued compliance with the NAAQS, Richmond may exceed or violate the NAAQS. Therefore, Virginia has provided the following triggering events and contingency measures with a schedule for implementation in the event of future ozone air quality problems:

1. In the event that VOC or NO_X emissions exceed the regional emissions budgets, with no more than one recorded ozone exceedance: Virginia will prepare a complete VOC and NO_X emission inventory and implement voluntary control measures, such as an ozone health advisory notification program.
2. In the event of two or more monitored exceedances of the ozone NAAQS at any one monitor, voluntary controls will continue to be implemented.
3. In the event of a monitored violation of the ozone standard, Virginia commits to implement a basic I/M program.
4. In the event that a violation of the ozone NAAQS at any one monitor occurs after the I/M contingency measure has been implemented: The Commonwealth commits to implement NO_X RACT on sources emitting greater than 100 tons/year.
5. In the event of more than two violations of the ozone NAAQS at any individual monitor following implementation of the I/M and NO_X RACT contingency measures: More restrictive requirements on open burning will be implemented; and if appropriate, transportation control measures will be developed and implemented.

The Basic I/M contingency measure will be implemented on the following schedule:

1. Notification received from EPA that a contingency measure must be implemented, or three months after a recorded violation;
2. Applicable regulation to be adopted 12 months after date established in ''1'' above;
3. Regulation implemented within 8 months of adoption;
4. Program will complete one full cycle two years after implementation.

The other contingency measures 1, 2, 4 and 5 will be implemented on the following schedule:

1. Notification received from EPA that a contingency measure must be implemented, or three months after a recorded violation;

2. Applicable regulation to be adopted 12 months after date established in ''1'' above;
3. Regulation implemented within 6 months of adoption;
4. Compliance achieved within 12 months of adoption.

EPA finds that the contingency measures in the Commonwealth's submittal meet the requirements of section 175(A)(d) of the Act and EPA's policy concerning the use of I/M as a contingency measure as outlined in the January 5, 1995 rulemaking [60 FR 1735].

5.E. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the Act, the Commonwealth of Virginia has agreed to submit a revised maintenance SIP eight years after the area is redesignated to attainment. Such revised SIP will provide for maintenance for an additional ten years.

EPA has determined that the maintenance plan adopted by the Commonwealth of Virginia for the Richmond nonattainment area and submitted to EPA on July 26, 1996 meets the requirements of section 175A of the Act. Therefore, EPA is proposing approval of the maintenance plan.

III. Interim Implementation Policy (IIP) Impact

On December 13, 1996, EPA published proposed revisions to the ozone and particulate matter NAAQS. Also on December 13, 1996, EPA published its proposed policy regarding the interim implementation requirements for ozone and particulate matter during the time period following any promulgation of a revised ozone or particulate matter NAAQS (61 FR 65751). This IIP includes a proposed policy regarding ozone redesignation actions submitted to and approved by EPA prior to promulgation of a new ozone standard, as well as those submitted prior to and approved by EPA after the promulgation date of a new or revised ozone standard.

According to the proposed IIP policy, complete redesignation requests, submitted and approved by EPA prior to the promulgation date of the new or revised ozone standard, will be allowed to redesignate to attainment based on the maintenance plan's ability to demonstrate attainment of the current 1-hour standard and compliance with existing redesignation criteria.

As discussed previously, the Richmond redesignation request demonstrates attainment under the current 1-hour ozone standard. Since the EPA is proposing to approve this request prior to the promulgation date of the new or revised ozone standard, the Richmond redesignation request is compatible with the proposed IIP.

IV. Motor Vehicle Emissions Budget

To achieve expeditious attainment of the NAAQS, the Clean Air Act provisions at section 176 require that any project, program or plan in any way approved, accepted or funded by the federal government conform to the applicable SIP. As discussed earlier in this rulemaking in 2.B.2. Conformity Provisions, conformity determinations are required in both maintenance and nonattainment areas. Transportation projects, Transportation Improvement Programs (TIPs) and Long Range Transportation Plans must demonstrate conformity.

In 40 CFR 51.392 EPA defines a motor vehicle emissions budget as that portion of the total allowable emissions of any criteria pollutant or its precursors, which is defined in a revision to the SIP required to meet reasonable further progress, attainment or maintenance demonstrations, and which is allocated to highway and transit vehicles. The applicable implementation plan for an ozone nonattainment area designates a motor vehicle emissions budget for VOCs and may also allocate a similar budget for NO_X in the case of the Post 1996 Reasonable Further Progress Plans required in ozone nonattainment areas classified as serious or above. The applicable SIP for an ozone nonattainment area may also include a NO_X budget if NO_X reductions are being substituted for reductions of VOCs in milestone years required for reasonable further progress. The applicable SIP must demonstrate that this NO_X budget will be achieved with measures contained therein.

40 CFR 51.404 requires that long range transportation plans specifically describe the transportation system envisioned for certain future years, which are called horizon years. For maintenance areas, the regional analysis of emissions from this transportation system in each horizon year must be less than or equal to the motor vehicle emissions budget established by the maintenance plan. EPA's transportation conformity regulations require long range transportation plans to demonstrate conformity for a period of time (20 years) that goes well beyond the actual control strategy period on which the budget is based. The maintenance plan requires adopted rules to cover only a ten year maintenance period (Virginia's maintenance period for Richmond lasts until 2007).

Virginia is required by the Clean Air Act to perform a regional emissions analysis on their long range transportation plans and compare the ozone precursor emissions from this analysis to the VOC and NO_X motor vehicle emissions budgets, in ten year increments for the 20 year timeframe of the long range transportation plan. The Commonwealth chose to create a VOC and NO_X motor vehicle emissions budget for the Richmond area for the years after the 10-year timeframe of the maintenance plan in order to facilitate transportation conformity determinations. To accommodate the projected mobile emissions growth in the Richmond area in the horizon years of the transportation planning cycle (2015 and beyond), additional emission reductions from enforceable control measures are necessary for positive conformity determination purposes. To be creditable, such reductions must be included in the SIP for the area.

On July 30, 1996, Virginia submitted a SIP revision modifying the motor vehicle emissions budgets in the Richmond maintenance plan in support of the area's transportation plans for the period beginning in 2015. Although mobile source emissions of NO_X and VOC are predicted to rise in the year 2015 as VMT increases, Virginia anticipates that emission reductions will occur during this time period. The mobile emissions budget relies on reductions from a ban on open burning of such materials as trees, shrubs and brush from land clearing, trimmings from landscaping and household or business trash in the maintenance area during the ozone season months of June-August beginning in the year 2000. Additionally, reductions are anticipated from pending national emission control programs on non-road sources to offset growth, specifically new engine standards for marine engines, locomotive engines and heavy duty diesel engines. The Act requires that EPA promulgate new emission standards for marine engines, locomotive engines and heavy duty diesel engines. The emissions reductions from the open burning ban and the national control programs create a safety margin. For Richmond the safety margin for VOCs is 3.78 tons/day and for NO_X 6.64 tons/day. All these reductions from the area and non-road source categories are allocated to the motor vehicle emissions budget for the purposes of conformity determinations. The motor vehicle emissions budgets in the maintenance plan are increased to 35.64 tons/day for VOCs and 67.71 tons/day for NO_X, effective on January 1,

2015. Virginia used applicable EPA guidance in calculating the anticipated emission benefits from the national control programs. EPA's guidance includes two policy memos ''Future Nonroad Emission Reduction Credits for Locomotives'' dated January 3, 1995 and ''Future Nonroad Emission Reduction Credits for Court Ordered Nonroad Standards'' dated November 28, 1996.

In general, approved budgets in the SIP are not superseded until the replacement budgets in the next SIP are actually SIP approved. However, because budgets after 2007 are not required by the Act for this maintenance plan and are being established for conformity purposes only to bridge the gap between the end of the first maintenance plan and the horizon years, these budgets will cease to apply once the second ten-year maintenance plan is submitted to EPA. The new submitted budget prepared by the Commonwealth for the second 10-year maintenance plan will replace the budget being approved today, as soon as it is submitted to EPA because these budgets will be a more appropriate basis of conformity. If the national emission control programs relied on in this SIP revision are not implemented according to the current schedule or do not produce the emission benefits anticipated, the Commonwealth commits to revising the SIP to include other measures as necessary to compensate any shortfall. Furthermore, the long range motor vehicle emission budget approved today will have to be incorporated into the second ten-year maintenance plan demonstrating continued attainment of the ozone NAAQS developed for the Richmond area. To satisfy conformity requirements in outlying years, EPA is approving the motor vehicle emissions budget for the Richmond area submitted on July 30, 1996 into the Virginia SIP.

V. Proposed Action

EPA has evaluated the Commonwealth's redesignation request for Richmond for consistency with the Act, EPA regulations, and EPA policy. EPA has determined that the redesignation request and maintenance plan submitted by the Commonwealth meet the requirements of section 107(d)(3)(E) and policy set forth in the General Preamble and policy memorandum discussed in this notice for area redesignations, and today is proposing approval of Virginia's redesignation request for Richmond submitted on July 26, 1996. Furthermore, EPA is proposing approval of the required maintenance plan into the Virginia SIP because it meets the requirements of section 175A. EPA is also proposing to approve the motor vehicle emissions budget for the Richmond area into the SIP. The Richmond nonattainment area is subject to the Act's requirements for moderate ozone nonattainment areas until and unless it is redesignated to attainment. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

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

VI. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Redesignation of an area to attainment under section 107(d)(3)(E) of the Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. The Administrator certifies that the approval of the redesignation request will not affect a substantial number of small entities.

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under 40 CFR 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 proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

The Regional Administrator's decision to approve or disapprove Virginia's redesignation request for Richmond, the associated maintenance plan and the Richmond area mobile emissions budget will be based on whether it meets the requirements of section 110(a)(2) (A)–(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 5, 1997.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 97–15569 Filed 6–12–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–5839–1]

RIN 2060–AH07

National Emission Standards for Hazardous Air Pollutants, from Secondary Lead Smelting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments to rule.

SUMMARY: This action amends the national emission standards for hazardous air pollutants (NESHAP) for new and existing secondary lead smelters. Changes to the NESHAP are being made to address comments received in petitions to reconsider sent to the EPA following promulgation of the final rule. These changes affect several aspects of the final rule including applicability of the THC limit for collocated blast and reverberatory furnaces, minimum baghouse standard operating procedure (SOP) requirements, and bag leak detection system specifications and requirements. Several minor changes are also being made to clarify the intent of the rule.

In the Final Rules Section of this **Federal Register**, the EPA is also making these amendments as a direct final rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no significant adverse comments. A detailed rationale for the action is set forth in the direct final rule. If no significant adverse comments are received by the due date (see DATES section below), no further action will be taken with respect to this proposal, and the direct final rule will become final on the date provided in that action. If the EPA receives significant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this notice. Any parties interested in commenting on this notice should do so at this time.

DATES: *Comments.* Comments must be received on or before July 14, 1997, unless a hearing is requested by June 23, 1997. If a hearing is requested, written comments must be received by July 28, 1997.

Public Hearing. Anyone requesting a public hearing must contact the EPA no later than June 23, 1997. If a hearing is held, it will take place on June 30, 1997, beginning at 10:00 a.m.

ADDRESSES: *Docket.* Docket No. A–92–43, containing information considered by the EPA in development of the promulgated standards, is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday except for Federal holidays, at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC–6102), 401 M Street, SW, Washington, DC 20460; telephone (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

Comments. Written comments should be submitted to: Docket A–92–43, U.S. EPA, Air & Radiation Docket & Information Center, 401 M. Street, S.W., Room 1500, Washington, D.C. 20460.

Public Hearing. If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Mr. Kevin Cavender, Metals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone (919) 541–2364.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Cavender, Metals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone (919) 541–2364.

SUPPLEMENTARY INFORMATION: If no significant, adverse comments are received by July 14, 1997 no further activity is contemplated in relation to this proposed rule and the direct final rule in the final rules section of this **Federal Register** will automatically go into effect on August 4, 1997. If significant adverse comments are timely received, the direct final rule will be withdrawn and all public comment received will be addressed in a subsequent final rule. Because the EPA will not institute a second comment period on this proposed rule, any parties interested in commenting should do so during this comment period.

For further supplemental information, the detailed rationale, and the rule provisions, see the information provided in the direct final rule in the final rules section of this **Federal Register**.

Administrative Requirements

Docket

The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docket system is intended to allow members of the public and affected industries to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the BID's and preambles to the proposed and promulgated standards, the contents of the docket will serve as the official record in case of judicial review (section 307(d)(7)(A) of the Act).

Executive Order 12866

The Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the E.O. 12866 (58 FR 51735, October 4, 1993). The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this amendment to the final rule is not a ''significant regulatory action'' under the terms of the Executive Order and is therefore not subject to OMB review.

Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

This amendment reduces the costs of complying with the final rule, it will not increase expenditures by State, local, and tribal governments or the private sector. Therefore, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C 3501 et seq., the EPA must consider the paperwork burden imposed by any information collection request in a proposed or final rule. This amendment to the rule will not impose any new information collection requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule would not have a significant impact on a substantial number of small entities because this proposed rule will not result in increased economic impacts to small entities, and will result in reduced impacts in all cases. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements, Secondary lead smelters.

Dated: June 4, 1997.

Carol M. Browner,

Administrator.

[FR Doc. 97–15571 Filed 6–12–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

[WT Docket No. 97–81; DA 97–839]

Multiple Address Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action provides for an extension of time to file comments and reply comments in this proceeding. The effect of this action is to grant a short extension of time to file comments (ten extra days) and reply comments (fifteen days thereafter). This action provides additional time to respond to issues in this proceeding.

DATES: Comments on or before May 1, 1997, and Reply Comments on or before May 16, 1997.

FOR FURTHER INFORMATION CONTACT: Susan Magnotti of the Commission's Wireless Telecommunications Bureau at (202) 418–0680.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order,* DA 97–839, adopted April 18, 1997, and released April 18, 1997 (62 FR 11407, Mar. 12, 1997). The full text of this *Memorandum Opinion and Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239) 1919 M Street, NW, Washington, DC. The complete text may be purchased from the Commission's copy contractor, ITS, Inc., 2100 M Street NW, Suite 140, Washington, DC 20037, telephone (202) 857–3800.

Summary of Order

1. Before us are a Motion for Extension of Time filed by UTC, The Telecommunications Association (''UTC''), for an extension of time to file comments and reply comments in this proceeding, and its concurrently filed Motion to Supplement the Record. Currently, comments in this proceeding are due on April 21, 1997, and reply comments are due on May 6, 1997. In support of its Motion for Extension of Time, UTC argues that the Commission needs this additional time to respond to UTC's Motion to Supplement the Record, and to allow the parties to evaluate the material that UTC seeks to add to the record. In the latter pleading, UTC requests the Commission to place in the record ''the applications or other information forming the factual basis of the FCC's 'preliminary examination' of the pending 932–941 MHz [Multiple Address System (''MAS'')] applications,'' or ''the basis for the FCC's characterization of the 'vast majority' of the pending 932–941 MHz MAS applicants as 'seemingly proposing to use their licenses principally to provide subscriber-based services.' '' UTC argues that commenters should have a ''meaningful opportunity'' to respond to the Commission's assessment that the MAS applications in question primarily proposed to provide subscriber-based services, and, hence, that competitive bidding procedures rather than random selection procedures should be used to choose among mutually exclusive applicants in the MAS service.

2. The Commission's assessment of the 932/941 MHz MAS applications was made using its staff's expertise to review the applications both in paper form and as input into its database. Unfortunately, the paper versions of the applications were destroyed in a flood in Gettysburg on June 18–19, 1996. Data recorded in the Commission's database from the applications, however, have been and continue to be available to the public from the Commission's Gettysburg Public Reference Room and from the Commission's copy contractor, International Transcription Service (ITS).

3. Since all existing data regarding the MAS applications are and have been available to the public, UTC's stated reasons for an extension of time are moot. To accommodate any confusion that may have resulted from the circumstances described above, however, we will grant a short extension of time to file comments (ten extra days) and reply comments (fifteen days thereafter).

4. Accordingly, it is ordered, that the Motion to Supplement the Record filed by UTC, The Telecommunications Association, is denied;

5. It is further ordered, that the Motion for Extension of Time filed by UTC, The Telecommunications Association, is granted in part, to allow the filing of comments on or before May 1, 1997, and reply comments on or before May 16, 1997.

List of Subjects 47 CFR Part 101

Communications equipment, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–15314 Filed 6–12–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018—AE29

Endangered and Threatened Wildlife and Plants; Proposal to List the Klamath River Population Segment of Bull Trout as an Endangered Species and Columbia River Population Segment of Bull Trout as a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to list the Klamath River population segment of bull trout (*Salvelinus confluentus*) as endangered from south-central Oregon; and the Columbia River population segment of bull trout as threatened from the northwestern United States and British Columbia, Canada, with a special rule, pursuant to the Endangered Species Act of 1973, as amended (Act). The Klamath River population segment, comprised of seven bull trout populations from south-central Oregon, is threatened by habitat degradation, irrigation diversions, and the presence of non-native brook trout. The Columbia River population segment, comprised of 386 bull trout populations in Idaho, Montana, Oregon, and Washington with additional populations in British Columbia, is threatened by habitat degradation, passage restrictions at dams, and competition from non-native lake and brook trout. The special rule allows for take of bull trout within the Columbia River population segment if in accordance with applicable State fish and wildlife conservation laws and regulations. Pursuant to a court order, this rule is based on the 1994 administrative record. All available information, including current data, will be considered prior to promulgation of a final rule. If, after consideration of all available data, this proposal is made final, it would extend protection of the Act to these two fish population segments.

DATES: Comments from all interested parties must be received by August 12, 1997. Public hearings locations and dates are set forth in **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Comments and material concerning this proposal should be sent to the U.S. Fish and Wildlife Service, Snake River Basin Field Office, 1387 S. Vinnell Way, Room 368, Boise, Idaho 83709. Comments and material received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert Ruesink, Field Supervisor, Snake River Basin Field Office (see **ADDRESSES** section) (telephone 208/378–5243; facsimile 208/378–5262).

SUPPLEMENTARY INFORMATION: Public hearings locations and dates are:

1. Tuesday, July 1, 1997, from 2:00–4:00 p.m. and 6:00–8:00 p.m., Ramada Inn Portland Airport, 6221 N.E. 82nd Avenue, Portland Oregon.
2. Tuesday, July 8 1997, from 2:00–4:00 p.m. and 6:00–8:00 p.m., Shilo Inn, 923 East Third Avenue, Spokane, Washington.
3. Thursday, July 10, 1997, from 2:00–4:00 p.m. and 6:00–8:00 p.m., Doubletree Hotel Edgewater (formerly Village Red Lion Inn), 100 Madison Street, Missoula, Montana.
4. Tuesday, July 15, 1997, from 2:00–4:00 p.m. and 6:00–8:00 p.m., Shilo Inn, 2500 Almond Street, Klamath Falls, Oregon.
5. Thursday, July 17, 1997, from 2:00–4:00 p.m. and 6:00–8:00 p.m., Doubletree Hotel Riverside (formerly Red Lion Hotel), 2900 Chinden Blvd., Boise, Idaho.

Background

Bull trout (*Salvelinus confluentus*) were first described by Girard in 1856 from a specimen collected on the lower Columbia River. Cavender (1978) presented morphometric, meristic, osteological, and distributional evidence to document the separation between dolly varden (*Salvelinus malma*) and bull trout. Based on this work, taxonomists have recognized this separation since 1978 (Bond 1992). Bull trout and dolly varden were officially recognized as separate species by the American Fisheries Society in 1980 (Pratt 1992).

Although the bull trout is well accepted as a species among specialists in the evolution and classification of salmonid fishes (R. Behnke, *in litt.*, 1993), some uncertainty remains regarding the taxonomic status of bull trout among fisheries managers and industry (WDW 1992, Platts et al. 1993). When discriminate function values were used to separate populations of bull trout from dolly varden in the Puget Sound, a normal distribution resulted rather than a bimodal curve, which indicated that a clear separation of these species does not exist (C. Kraemer, *in litt.* 1993). In addition, Kraemer (*in litt.* 1992; undated U.S. Forest Service (USFS) survey) observed the two species spawning together, and suggested introgression may be occurring. In contrast, Phillips et al. (1992) and Pleyte et al. (1992) examined evolutionary relationships among six species of *Salvelinus* using ribosomal DNA analysis, and found clear distinctions among all six species. Their results suggested that dolly varden are more closely related to arctic char than bull trout, and that bull trout evolutionarily diverged from a line that gave rise to *S. leucomaenis* (a char indigenous to Japan) rather than the line that gave rise to dolly varden or arctic char. In addition, Cavender (1984) concluded that the evolutionary distance between bull trout and dolly varden is significant based on at least four separate chromosomal changes that separate the two taxa, and that the two species cannot be considered sister species based on those differences. As a result, the 1994 record supports the distinction between bull trout and dolly varden.

Bull trout populations are known to exhibit four distinct life history forms: resident, fluvial, adfluvial, and anadromous. Resident bull trout spend their entire life cycle in the same (or nearby) streams in which they were hatched. Fluvial and adfluvial populations spawn in tributary streams where the young rear from 1 to 4 years before migrating to either a lake (adfluvial) system or a river (fluvial) system, where they grow to maturity (Fraley and Shepard 1989). Anadromous fish spawn in tributary streams, with major growth and maturation occurring in salt water. Diverse life history strategies are important to the stability and viability of bull trout populations (Rieman and McIntyre 1993).

Bull trout display a high degree of sensitivity at all life stages to environmental disturbance and have more specific habitat requirements than many other salmonids (Fraley and Shepard 1989, Howell and Buchanan 1992, Rieman and McIntyre 1993). Bull trout growth, survival, and long-term population persistence appear to be particularly dependent upon five habitat characteristics: (1) cover, (2) channel stability, (3) substrate composition, (4) temperature, and (5) migratory corridors (Rieman and McIntyre 1993).

All life history stages of bull trout are closely associated with various forms of cover, including large woody debris, undercut banks, boulders, and pools

(Fraley and Shepard 1989; Goetz 1989; Hoelscher and Bjornn 1989; Oliver 1979; Pratt 1984, 1985, and 1992; Shepard et al. 1984b; Thomas 1992). Cover provides critical rearing, foraging, and resting habitat, and protection from predators (Bryant 1983, Meehan 1991, Salo and Cundy 1987, Sedell and Everest 1991).

Several bull trout life history features make them exceptionally sensitive to activities directly or indirectly affecting stream channel integrity and altering natural flow patterns. Juvenile and adult bull trout frequently inhabit areas of reduced water velocity, such as side channels, stream margins, and pools that are often eliminated or degraded by management activities (Rieman and McIntyre 1993). Length and timing of incubation to emergence (200 days or more during winter and early spring), the strong association of juvenile fish with stream channel substrates, and a fall spawning period, make bull trout particularly vulnerable to altered stream flow patterns and associated channel instability (Fraley and Shepard 1989, Pratt 1992, Pratt and Huston 1993, Rieman and McIntyre 1993).

Preferred spawning habitat consists of low gradient streams with loose, clean gravels (Fraley and Shepard 1989). Fine sediments fill spaces between the gravel that are needed by incubating eggs and fry. An extremely long period of residency in the gravel (200 or more days) makes bull trout especially vulnerable to fine sediments and water quality degradation (Fraley and Shepard 1989). Juveniles also live on or within the streambed cobble (Oliver 1979, Pratt 1984). High juvenile densities were observed in Swan River tributaries with a diverse cobble substrate and low percentage of fine sediments (Shepard et al. 1984a).

Successful bull trout spawning and development of embryos and juveniles requires very cold water temperatures (Bjornn and Reiser 1991, Goetz 1989, McPhail and Murray 1979, Pratt 1992). Additionally, water temperature influences the distribution of juveniles (Fraley and Shepard 1989, Pratt 1992). Such strict temperature tolerances predispose bull trout to declines from any activity occurring in a watershed that leads to increased stream temperatures.

Extensive migrations are characteristic of the species (Fraley and Shepard 1989, Oregon Department of Fish and Wildlife (ODFW) 1993). Migratory bull trout facilitate the interchange of genetic material between populations, ensuring sufficient variability within populations. Migratory forms also provide a mechanism for restoring local populations extirpated due to natural or human-caused events (Rieman and McIntyre 1993, citing others). Migratory forms are more fecund and larger than non-native brook trout, potentially reducing the risks associated with hybridization (Rieman and McIntyre 1993). The greater fecundity of these larger bull trout also enhances the ability of a population to persist in the presence of introduced fishes (Rieman and McIntyre 1993). Migratory bull trout have been restricted and/or eliminated due to stream habitat alterations, including seasonal or permanent obstructions, detrimental changes in water quality, increased temperatures, and the alteration of natural stream flow patterns. Migratory corridors tie seasonal habitat together for anadromous, adfluvial, and fluvial forms, and allow for dispersal of resident forms for recolonization of rebounding habitats. The disruption of migratory corridors, if severe enough, will result in the loss of migratory life history types and isolate resident forms from interacting with the metapopulation (U.S. Department of Agriculture (USDA) 1993).

Distinct Population Segments

Pursuant to a court order, the Service evaluated the distribution of bull trout throughout the species' range for the presence of distinct population segments in our reconsidered 12-month finding using the 1994 administrative record. This approach was undertaken because bull trout occur in widespread but fragmented habitats and have several life history patterns. In addition, the threats to the fish are diverse, and the quantity and quality of information regarding the population status and trends of bull trout varies greatly.

The Service has considered three elements when evaluating the status of potential distinct population segments—discreteness, significance, and conservation status. Discreteness refers to the separation of a population segment from other members of the species based on either (1) physical, physiological, ecological, or behavioral factors, or (2) international boundaries that result in significant differences in exploitation control, habitat management, conservation status, or regulatory mechanisms. Significance refers to the biological and ecological importance or contribution of a discrete population to the species throughout its range. Examples of significance include persistence of a discrete population segment in a unique or unusual ecological setting, evidence that loss of discrete segment would result in a significant gap in the range of the species, or evidence that the discrete segment differs markedly from other populations of the species in genetic characteristics.

Based on the 1994 administrative record and as discussed in the reconsidered 12-month finding, numerous bull trout populations are isolated from each other because of unsuitable habitat and/or impassable dams and diversions. Though these isolated populations could be considered discrete, few populations of bull trout are significant to the species as a whole. The 1994 record provided evidence of significance for five distinct population segments: (1) Coastal/Puget Sound; (2) Klamath River; (3) Columbia River; (4) Jarbidge River; and (5) Saskatchewan River. Based on the 1994 administrative record, the Service determined in the reconsidered 12-month finding that listing is not warranted for the Coastal/Puget Sound, Jarbidge River, and Saskatchewan River population segments. However, listing is warranted for the Klamath River and Columbia River population segments based on the 1994 administrative record.

Klamath River Population Segment

The Klamath River originates in south-central Oregon near Crater Lake National Park, and flows southwest into northern California where it meets the Trinity River and empties into the Pacific Ocean. Bull trout in this drainage are discrete because of physical isolation due to several small mountain ranges in central Oregon (separating this population from that of the Columbia River) and the Pacific Ocean. Leary and Allendorf (1991) determined the genetic structure of bull trout in the Klamath and Columbia River drainages with the use of protein electrophoresis. This study concludes that not only are these two groups of fish reproductively isolated, but also evolutionarily distinct. In addition, Williams et al. (abstract in: Friends of the Bull Trout Conference, 1994) separated the Klamath and Columbia River populations into different clades based on mtDNA diversity patterns. As a result, the Klamath River population segment is significant to the taxon because of substantial genetic differences from the Columbia River populations.

Columbia River Population Segment

The Columbia River population segment includes the entire Columbia River basin and all its tributaries, excluding the isolated bull trout populations found in the Jarbidge River in Nevada which comprises the Jarbidge population segment. Though Williams et al. (abstract in: Friends of the Bull Trout Conference, 1994) identified two distinct clades (taxonomic groupings of descendants by common ancestors) in the Columbia Basin (Upper and Lower Columbia) based on mtDNA diversity patterns, a discrete geographical boundary between the two clades was not documented in the record. The Columbia River population segment is significant because the overall range of the species would be substantially reduced if this discrete population were lost.

Status and Distribution

The base of information contained in the 1994 administrative record regarding the status and trends of bull trout populations throughout the species' range varies in quantity and quality. The criteria for defining populations and estimating extinction risks were not standardized among individual states. Bull trout information from the state of Montana (primarily Thomas 1992) was the most organized and complete. In Idaho, with the exception of Lake Pend Oreille and its tributaries that support an important bull trout fishery, bull trout status information was incomplete. The status of a majority of Oregon bull trout populations is unknown. Similar patterns in quality of data were found for bull trout populations in Canada. Interpretation of ''status unknown'' was the primary problem in status information contained in the 1994 administrative record.

In 1993, the U.S. Department of Agriculture produced a working draft concerning the status and conservation needs for bull trout (USDA 1993). This publication, entitled ''An Assessment of the Conservation Needs for Bull Trout,'' surveyed biologists from State, Federal, and Tribal agencies, and private industry in the range of bull trout. Results from this survey represented the most thorough attempt to date at rangewide classification of bull trout. Survey participants were requested to fill out forms to provide information on life history, status, factors influencing status, and whether individual bull trout populations were considered remnant. The authors noted, that ''[a]lthough the quality of available data was not always consistent across sources, no attempt was made to account for that variability.'' Many of these data could be described as anecdotal, though a systematic attempt was made to address the entire species' range.

The appropriate interpretation of the ''remnant'' classification was the most difficult aspect of the survey to analyze. The 1993 publication classified a remnant population as one in which ''the fish are known to be present but in very low numbers.'' Additionally, a remnant classification included the caveat that ''[a]lthough long-term viability is questionable, the population may constitute a significant portion of the species gene pool.'' Lacking any population status data (i.e. declining, stable, secure, or increasing), the Service interpreted a remnant classification by itself as a ''gap'' in status information. When a remnant classification was accompanied by status information other than ''unknown'', the Service generally considered these data reliable and accurate.

Where population status or trends are known but only for a portion of a distinct population segment (i.e., there are informational gaps in 1994 record), the Service considered documented trends within a distinct population segment to be representative of the entire population segment.

Klamath River Population Segment

Historical accounts suggest that the bull trout was once widely distributed and exhibited diverse life history traits in the Klamath Basin. The earliest records of bull trout in the Klamath Basin were from the late 1800's (Oregon Chapter of the American Fisheries Society (OCAFS) 1993, citing Cope) and suggested that an adfluvial life history form occurred in Klamath Lake. Migratory fluvial bull trout evidently were present in some of the larger streams in the basin as recently as the early 1970's (Ziller *in litt.* 1992). Goetz (1989) suggested that bull trout occurred in 15 separate drainages between 1948 and 1979. By 1989, the distribution of the species had been restricted to 10 streams in the basin (author unknown, FWS notes, 1993). The most recent data provided in the 1994 record suggested that in 1991, only seven segregated resident populations still occurred in the basin and were confined to headwater streams in the Sprague, Sycan, and Upper Klamath Lake subbasins. The largest area occupied by any of the seven populations is 2.5 stream miles, and basinwide, only 12.5 miles of stream is inhabited by bull trout (Ziller *in litt.* 1992).

Bull trout occur in four tributaries to the Sprague River subbasin. Ziller (*in litt.* 1992) compared abundance estimates between samples taken in 1979 and 1989 at seven 30-meter sites on Deming, Boulder, Brownsworth, and Leonard creeks. Ziller found the abundance of bull trout was relatively unchanged at five sites, increased at one site, and decreased at one site. In 1991 and 1992, ODFW estimated a total population size of 3,310 individuals within the 4 segregated populations of the Sprague River subbasin (OCAFS 1993). The effective population size was estimated to be 140 to 462 mature fish, with 43 percent of these fish associated with Deming Creek. The remaining 57 percent were split unequally among Boulder, Brownsworth, and Leonard creeks. Although the Sprague River subbasin contains the healthiest remaining populations in the Klamath population segment, these populations are considered to be at a moderate to high risk of extinction (Ratliff and Howell 1992).

Long Creek may be supporting the only remaining bull trout population in the Sycan River subbasin. Ratliff and Howell (1992) suggested that the extinction risks of Long and Coyote creeks were moderate and high, respectively, based on sampling efforts in 1989. Sampling efforts in 1990 and 1991 suggest that populations previously identified in Coyote Creek and the Upper Sycan River are probably extinct (OCAFS 1993). The total population size in Long Creek was estimated at 842 individuals with an effective population size of 36 to 119.

Populations in the Upper Klamath Lake subbasin are at precarious abundance levels, and at a high risk of extinction (Ratliff and Howell 1992). Small populations remain in Sun and Threemile creeks. Populations in Cherry and Sevenmile creeks are likely to be extinct (OCAFS 1993). The Sun Creek population was estimated at 133 total individuals in 1991, with an effective population size of only 11 to 35 mature fish. No abundance estimates were reported for Threemile Creek, but only nine fish were sampled in the stream during recent surveys.

Because the resident life history trait prevails in the remaining Klamath River, bull trout populations, size at maturity and associated fecundity have been reduced in the population from historic conditions. Average fecundity in 1989 was only 170 eggs/female, and a predominance of males in the sample suggested a skewed sex ratio of 2.5 males/female (Rode 1990). These data suggest that the natural recovery potential of these populations is poor.

In summary, all seven of the remaining populations in the Klamath River Basin are currently disconnected from each other, and are considered to be isolated, remnant groups from a historically larger, more diverse metapopulation. Ratliff and Howell

(1992) determined each population to be at a moderate or high risk of extinction. Bull trout occur in three primary subbasins, with the fish residing in the Upper Klamath Lake subbasin the most precarious. The Sprague River and Sycan River subbasins each contain isolated populations within limited available habitat of 2.5 miles or less. Recent extinctions reportedly have occurred in Coyote Creek and the Upper Sycan River of the Sycan subbasin, and Cherry and Sevenmile creeks of the Upper Klamath Lake subbasin (Ratliff and Howell 1992).

Columbia River Population Segment

The Columbia River population segment encompasses a vast geographic area including portions of Idaho, Montana, Oregon, Washington and British Columbia. For discussion purposes, this segment was split into three areas: 1) the Columbia River upstream from the confluence with the Snake River, 2) the Snake River and its tributaries, and 3) the Columbia River downstream of the Snake River confluence.

Upper Columbia River

The upper Columbia River portion of the distinct population segment was separated into four subareas to aid in describing status and distribution: (1) Kootenai River basin, (2) Clark Fork/Pend Oreille basin, (3) Spokane River Basin, and (4) Washington tributaries. The Kootenai River drains the southeastern portion of British Columbia west of the continental divide, and flows through the extreme northwestern section of Montana and northern Idaho, before flowing north back into Canada where it joins the Columbia River. The Clark Fork drains the majority of area west of the continental divide in Montana before flowing into Idaho and Lake Pend Oreille. The Pend Oreille River, including the Priest River and tributaries, flows north and joins the Columbia River just north of eastern Washington. The Spokane River drains both the Coeur d'Alene and St. Joe basins and flows west joining the Columbia River in western Washington. Major Washington tributaries in the upper Columbia River portion of the distinct population segment include the Entiat, Wenatchee, Methow, and Yakima rivers.

Kootenai River Basin

Historically, bull trout were likely distributed throughout the Kootenai River basin (Thomas 1992). Construction of Libby Dam and the formation of Lake Koocanusa functionally separated bull trout into different populations. The bull trout population in Lake Koocanusa is, generally, small in size and constitutes a minor portion of angler harvest (Thomas 1992). These fish have limited access to spawning tributaries putting this population at risk (Thomas 1992).

Below Libby Dam, bull trout populations are separated by Kootenai Falls. Kootenai Falls serves as a natural barrier to upstream migration (Thomas 1992). Bull trout between Libby Dam and Kootenai Falls rely on two remaining tributaries, Quartz and Pipe creeks, for spawning. Historically, bull trout were likely distributed throughout the Fisher River (tributary to the Kootenai below Libby Dam) since no physical barriers prevent dispersal. However, Thomas (1992) considered the status of fluvial bull trout in the Fisher River to be non-viable, or extinct. Information on bull trout populations in Montana below Kootenai Falls is incomplete. Several remnant populations are thought to occur in tributaries including the Yaak River. Of the 99 bull trout populations evaluated in the Kootenai River basin, all were at least at moderate risk of extinction, and 47 percent of these were considered to be at high risk of extinction (Thomas 1992).

Bull trout are considered uncommon in the Idaho portion of the lower Kootenai River (Esch and Hallock, citing others, 1993). Status is based on the relatively few individuals that contribute to the sport catch (1 percent). Based on limited surveys and harvest catch, the population trend in this portion of the Kootenai River appears to be declining. Bull trout populations in Kootenay Lake in British Columbia are considered stable with historic and current harvest rates remaining relatively high (Esch and Hallock, citing others, 1993).

Clark Fork/Pend Oreille River Basin

The Clark Fork/Pend Oreille River basin drains the largest area in the Columbia River population segment. Major tributaries of the Clark Fork are the Flathead, Bitterroot, and Blackfoot rivers. Historically, strong fluvial, adfluvial, and resident populations of bull trout were likely distributed throughout the system (Thomas 1992). The healthiest remaining bull trout populations are adfluvial because passage from stream to lake environments is unimpeded. Resident populations of bull trout are remnant and exist in the headwater reaches of tributaries (Thomas 1992, USDA 1993). Fluvial populations have shown the greatest decrease concurrent with the construction of mainstem impoundments. For discussion purposes, the Clark Fork/Pend Oreille Basin is separated into five areas: Upper Clark Fork (including the Bitterroot and Blackfoot rivers); Lower Clark Fork (from the Bitterroot confluence downstream to Lake Pend Oreille, including the Flathead River below Flathead Lake); Flathead Lake and its tributaries; Lake Pend Oreille and its tributaries; and Lower Pend Oreille River.

Upper Clark Fork

Historically, fluvial and resident populations of bull trout probably inhabited the entire upper mainstem Clark Fork (Thomas 1992). However, due to mining related stream degradation, these populations have become increasingly rare, or, in some cases, extirpated entirely from former habitats (Thomas 1992). Natural recolonization of these populations seems remote due to continued habitat problems and the absence of strong fluvial populations downstream. Bull trout are considered rare in many tributaries with most remaining populations at a high risk of extinction (Thomas 1992).

The healthiest remaining Clark Fork tributary population of bull trout is Rock Creek (Thomas 1992). Rock Creek generally has had relatively few impacts from humans, which undoubtedly has positively influenced this population. Conversely, Flint Creek has experienced a substantially higher degree of perturbation and consequently, this population is considered to be in perilous condition (Thomas 1992). However, the majority (86 percent) of bull trout in Flint and Rock creeks combined are considered to be at moderate risk of extinction.

The Blackfoot River is one of the largest tributaries to the upper Clark Fork River. Historically, the Blackfoot contained resident and fluvial populations of bull trout. The fluvial component is thought to have had connections with the mainstem Clark Fork. This connection was broken in the early 1900's by the construction of Milltown Dam, which effectively isolated bull trout in the Blackfoot from populations in the mainstem Clark Fork (Thomas 1992). Fluvial populations of bull trout still use the mainstem Blackfoot; however, their population status is unknown. Isolated populations of adfluvial and resident fish still exist within the basin. In the Blackfoot River, Peters (1990) found juvenile bull trout in only 40 percent of tributary streams surveyed in 1989, leading to a conclusion that Blackfoot bull trout were in jeopardy. None of the remaining populations are classified as abundant, and only three populations within the system are considered common. Overall, 66 percent and 32 percent of bull trout populations in the Blackfoot River were considered at a moderate and high risk of extinction, respectively (Thomas 1992).

Bull trout were historically distributed throughout the mainstem Bitterroot River and its tributaries (Thomas 1992). Bull trout now appear to be extinct in the majority of the mainstem Bitterroot River. Though tributary streams contain small isolated populations of bull trout, many are sympatric with non-native brook trout. Bull trout are considered abundant or common in 30 percent of the surveyed Bitterroot stream reaches, and uncommon or rare in 70 percent (Thomas 1992). Ninety-six percent of the bull trout populations in the Bitterroot system are considered to be small, fragmented, and at a moderate to high risk of extinction (Thomas 1992).

Lower Clark Fork

The Lower, or mainstem, Clark Fork River is segmented by several impoundments that do not provide fish passage. Above Lake Pend Oreille, Cabinet Gorge, Noxon Rapids, and Thompson Falls facilities separate the mainstem river. Historically, a natural barrier existed at Thompson Falls that prevented upstream passage. Prior to mainstem impoundments, migrating bull trout from Lake Pend Oreille likely used the tributaries below Thompson Falls for spawning (Thomas 1992). In addition, this area probably supported fluvial and resident populations of bull trout. Currently, bull trout are uncommon in the mainstem Clark Fork River, and all remaining populations are considered at moderate risk of extinction (Thomas 1992).

Populations of fluvial bull trout probably occurred historically throughout the drainage above Thompson Falls (Thomas 1992). Adfluvial fish from Lake Pend Oreille probably did not use this area due to the natural barrier created by Thompson Falls. Thomas (1992) suggested that adfluvial bull trout from Flathead Lake may have migrated downstream. The construction of Kerr Dam blocked passage between Flathead Lake and the lower Flathead and Clark Fork rivers. Bull trout in the mainstem Clark Fork are considered rare or uncommon (Thomas 1992). Several important tributaries still serve as spawning grounds with many tributary populations existing at low numbers. Limited information exists on bull trout status in the lower Flathead River. Currently, bull trout are the least common salmonid found in the Flathead River below Kerr Dam. Of the 199 populations evaluated in the Lower Clark Fork and Flathead rivers, Thomas (1992) reported that 44 percent were at high risk of extinction and 56 percent were at moderate risk of extinction.

Flathead Lake

As in other areas in Montana, the actual historic distribution of bull trout in the Flathead Lake system is unknown. However, with few natural barriers and abundant interconnected habitat, bull trout likely were distributed throughout the system (Thomas 1992). Undoubtedly, resident and fluvial forms occupied areas within the drainage, but in the Flathead Lake system the adfluvial lifestage would most likely have had a distinct advantage. The larger adult size and increased reproductive potential would probably have made this the dominant life history form. Primary tributaries of Flathead Lake included the North, South, and Middle forks of the Flathead River, Swan River, and Stillwater River.

The interconnectedness of the Flathead system has been disrupted by the construction of several hydroelectric facilities that block historic migration corridors. Big Fork Dam on the Swan constructed in 1902 blocked bull trout passage into the Swan River drainage. Similarly, the completion of Hungry Horse Dam in 1953 on the South Fork Flathead River further isolated bull trout populations. As previously mentioned, Kerr Dam blocks passage from the lower Flathead River into Flathead Lake. The North and Middle forks of the Flathead River still have relatively unimpeded passage into Flathead Lake.

Thomas (1992) reported that the Flathead system contained one of the most viable populations of adfluvial bull trout left in the coterminous United States. The viability of bull trout in the Flathead system should be qualified given more recent monitoring data that suggest certain populations within the system are declining.

Spawning redd counts in the North Fork (1991) and Middle Fork (1990 and 1991) Flathead rivers have decreased. The 1991 redd count information in the North Fork was 34 percent below the annual average. Redd counts in the Middle Fork during 1990 and 1991 were 43 percent and 28 percent below the annual average, respectively (Thomas 1992). Trend analysis, including redd count surveys from 1992 and 1993, indicate a significant decline in redd counts over a 15-year monitoring period (Weaver 1994). Moreover, the recent estimated rate of decline (7-year period) is significantly greater than the 15-year rate of decline. Bull trout redd counts reached the lowest observed levels in 1992 and 1993. Annual rate of decline was estimated at 16 redds per year based on the 15-year observation period, and 60 redds per year using the recent 7-year period of record.

Analysis of redd count trend information for four North Fork Flathead tributaries found a moderate level of annual variability within the system (Rieman and McIntyre 1993). Using the same information, the authors calculated a probability of 100-year persistence for each population, based on an extinction threshold of 10 redds, alternate year spawning, and an instantaneous growth rate of zero. Of the four populations examined, all were below 50 percent probability of persistence. When actual estimates for instantaneous growth rate were used, all four populations were still below the 50 percent probability of persistence over the next 100 years.

Rieman and McIntyre (1993) conducted the same analysis of redd count trend information for four Middle Fork Flathead tributaries and found a low to moderate level of annual variability within the system. Of the four populations examined, two populations were below 50 percent probability of persistence (40 percent and 29 percent), while fish in two tributaries had moderate to high probabilities for persisting (60 percent and 71 percent). When actual estimates for instantaneous growth rate were used, all four populations were below the 50 percent probability of persistence over the next 100 years.

Despite this apparent decline, and uncertain probabilities for persistence in bull trout populations in the North and Middle forks of the Flathead, each tributary still contains areas of pristine habitat and healthy bull trout (Thomas 1992). Adfluvial populations of bull trout in Glacier National Park reside in high quality habitat with little or no exposure to non-native species. Similarly, the Middle Fork of the Flathead still contains viable populations of bull trout (Thomas 1992). Overall, while referred to as a bull trout stronghold, Thomas (1992) reported that 91 percent of the populations in the North and Middle Fork of the Flathead River are at a moderate risk of extinction. The remaining 9 percent are judged to be at low risk of extinction.

Little population information was available from the 1994 administrative record regarding bull trout population status in the South Fork of the Flathead River prior to the construction of

Hungry Horse Dam. As previously stated, Hungry Horse Dam was built without allowing for fish passage, and this functionally isolated adfluvial populations of bull trout which would have migrated to Flathead Lake. This blockage resulted in a net loss of 38 percent of the available bull trout spawning habitat (Thomas 1992). Fish that were trapped behind Hungry Horse Dam established a new adfluvial population using the newly formed reservoir. Remote spawning locations in the Bob Marshall Wilderness Area have hampered collection of redd count surveys. However, where information is available, 83 percent of the remaining bull trout populations in the South Fork of the Flathead River are considered to be at a moderate risk of extinction (Thomas 1992).

Historically, the Swan River supported an adfluvial population of bull trout that migrated to Flathead Lake (Thomas 1992). Construction of Bigfork Dam in 1902 effectively blocked passage and isolated this population. Subsequently, a new adfluvial population developed in Swan Lake. The Swan Lake drainage also supports isolated resident populations of bull trout (Thomas 1992). Thomas (1992) reported that adfluvial bull trout in Swan Lake represent the healthiest population in the Flathead system. Based on redd counts, Swan Lake bull trout spawner densities appear to be higher than those in Flathead Lake (Thomas citing others 1992). Trend analysis based on redd counts for the Swan River system indicates that adfluvial bull trout populations are increasing (Weaver 1994). In addition, the 1993 redd count was the highest recorded, and represented a 57 percent increase over an 11-year average. In spite of this, Thomas (1992) considered bull trout in Swan Lake and Swan River to be at moderate risk of extinction.

Rieman and McIntyre (1993) conducted the same analysis of redd count trend information for four Swan River tributaries and found a low to high level of annual variability within the system. Of the four populations examined using an instantaneous growth rate of zero, two populations were below 50 percent probability of persistence (43 percent and 49 percent), while fish in two tributaries had moderate to high probabilities for persisting (65 percent and 74 percent). When actual estimates for instantaneous growth rate were used, all three populations had high probabilities for persistence (two populations at greater than 95 percent and 80 percent respectively) over the next 100 years (Rieman and McIntyre 1993). Conversely, one tributary had a low probability of persistence (4 percent).

Bull trout populations in the Stillwater River are depressed and are considered at a high risk of extinction (Thomas 1992). Historically, bull trout were probably distributed throughout the Stillwater system. While several lakes still contain adfluvial populations of bull trout, poor habitat conditions and non-native species interactions have made the occurrence of bull trout uncommon.

Lake Pend Oreille

The Lake Pend Oreille system in the upper Columbia River is delineated upstream by Cabinet Gorge Dam on the Clark Fork River. Constructed in 1951, Cabinet Gorge Dam blocked upstream passage and functionally isolated adfluvial bull trout from numerous tributary spawning areas. Similarly, the Lake Pend Oreille system is isolated downstream by Albeni Falls Dam (1952) on the mainstem Pend Oreille River. The major tributary to the Pend Oreille system in this area is the Priest River, that enters the Pend Oreille River downstream of Lake Pend Oreille.

Historical accounts indicate that bull trout were common throughout the Pend Oreille system (Esch and Hallock, citing others). These accounts undoubtedly included resident, fluvial, and adfluvial lifecycles. As was the case with bull trout in the Flathead system, an adfluvial lifecycle in Lake Pend Oreille would have been advantageous, and annual spawner escapement may have reached 10,000 fish (Pratt and Houston 1993). Annual population estimates indicated that between 1,100 and 2,000 adfluvial bull trout may occur in Lake Pend Oreille (Pratt and Houston 1993).

Analysis of redd count trend information for six Lake Pend Oreille tributaries found a high degree of annual variability within the system (Rieman and McIntyre 1993). The authors calculated a probability of 100-year persistence for each population, based on an extinction threshold of 10 redds, alternate year spawning, and an instantaneous growth rate of zero. Of the six populations examined, four populations were below 50 percent probability of persistence, while fish in the remaining two tributaries had high probabilities for persisting (87 percent and greater than 95 percent). When actual estimates for instantaneous growth rate were used, five of the populations were below the 40 percent probability of persistence over the next 100 years. Only one Lake Pend Oreille tributary had a high probability of persistence (88 percent).

Since 1983, portions of 21 different tributaries to Lake Pend Oreille have been surveyed for bull trout redds (Idaho Bull Trout Survey, no date). Year to year consistency in sampling each site has varied. Of the 21 tributary locations, only 6 index streams were surveyed from 1983 through 1992. These tributaries are East Fork Lightning, Johnson, Trestle, Grouse, North Gold, and Gold creeks. This sampling represents some of the best trend information in the 1994 administrative record concerning Lake Pend Oreille. During this period, redd counts in index streams varied from a high of 671 in 1985, to a low of 290 in 1986. The 1992 stream index redd count of 344 is 31 percent below the 9-year average of 500.

Pend Oreille River

The Priest River is the only remaining tributary of the Pend Oreille River below Lake Pend Oreille still supporting bull trout (Pratt and Houston 1993). As recently as 1972, bull trout were documented in seven tributaries of the Priest River below Priest Lake. However, in 1987, only three of these tributaries were found to contain bull trout. The reduction in bull trout abundance in Priest Lake has been reflected in decreased annual harvest (Mauser 1985). Between 1956 and 1970, an annual average of 1,200 bull trout were harvested in Priest Lake. In 1978, a record harvest of 2,320 fish occurred, but by 1983 this number had decreased to only 159 fish. Interactions with lake trout and overharvest have nearly extirpated the Priest Lake bull trout population (Esch and Hallock, citing others). Bull trout are still found in Upper Priest Lake and are considered to be healthy and a possible source of bull trout for the lower lake. Evidence also exists for the decline in redd counts in tributaries of both lakes (Esch and Hallock, citing others). Overall, Priest Lake is considered to be at a high risk of extinction, while Upper Priest Lake is thought to be at a moderate risk.

Little information is available in the 1994 administrative record regarding bull trout status in the lower Pend Oreille River. Below Lake Pend Oreille and Albeni Falls Dam, mainstem impoundments have fragmented fluvial bull trout habitat. Historic records and accounts indicate that fluvial bull trout were numerous (C. Vail, WDW, undated USFS survey). The current bull trout population is considered remnant and at a high risk of extinction (WDW 1992).

Spokane River Basin

Little information is available in the 1994 record concerning bull trout status in the Spokane River basin. It is assumed, however, that adfluvial, fluvial, and resident bull trout were distributed throughout the system including the Coeur d'Alene River, Lake Coeur d'Alene, and the St. Joe River drainage (Draft Conservation Plan, Idaho Department of Fish and Game (IDFG), Draft Bull Trout Conservation Plan for the Upper Spokane River Basin, no date). Restricted to Lake Coeur d'Alene and the St. Joe River, spawning appears to occur in only ten tributaries in headwater reaches of the system. The Coeur d'Alene subbasin is currently considered of special concern and at high risk of extinction (D. Cross, USFS, *in litt.* 1992). The St. Joe system is considered of special concern and at moderate risk of extinction.

In the Spokane River subbasin of the Columbia, stream surveys in 1935 and 1940 documented the presence of bull trout throughout the St. Joe River (USFS 1935; Maclay 1940). By 1992, the occupied range in the upper one-third of this river was reduced by 76 percent (Cross, pers. comm. 1993). Similar reductions have occurred in the Coeur d'Alene River drainage, where bull trout range may have been reduced 90 percent since surveys in 1940; presently bull trout may persist in only one isolated tributary in the entire drainage (Maclay 1940; Lider, USFS, pers. comm. 1994). Due to low numbers of fluvial spawners, bull trout in the Spokane River subbasin were estimated to have a moderate risk of extinction (Hoelscher, IDFG, *in litt.* 1992).

Washington State Tributaries

Historically, bull trout probably inhabited a majority of the tributaries to the upper Columbia River in Washington. In these tributaries, bull trout distribution has been significantly restricted and several populations, including the Okanogan River, Lake Chelan, and lower Yakima River, are extirpated (WDW 1992). Currently, 17 populations of bull trout occur in Washington above the Snake River confluence (WDW 1992). These populations include adfluvial, fluvial and resident components. Subbasins within the upper Columbia River still supporting bull trout are the Entiat, Methow, Naches, Wenatchee, and Upper Yakima drainages (WDW 1992). Of these populations, three are declining, seven are stable, and one population is considered secure. The status of the six remaining bull trout populations is unknown.

Within the upper Columbia River, risk of extinction was calculated for bull trout populations where the status was known (WDW 1992). Populations with unknown status were not classified by risk of extinction, but were given a priority ranking for information needs. Bull trout populations in Kachess and Keechelus Lakes (Upper Yakima River drainage), Roosevelt Lake, and the Pend Oreille River were considered to be at high risk of extinction (WDW 1992). Four bull trout populations in the Entiat, Methow, and Wenatchee River basins were classified as being at moderate risk of extinction (WDW 1992). Similarly, four other tributary populations in the Wenatchee, Methow, and Naches River basins were considered to be at low risk of extinction (WDW 1992). One tributary of the Methow River was considered to be at no immediate risk (WDW 1992). The remaining four bull trout populations in the upper Columbia River (Naches and Upper Yakima rivers) had an unknown status and were not classified.

Bull trout populations in the Entiat, Upper Yakima, Wenatchee, Methow and Naches occur in isolated segments and appear to be sparse in abundance (Brown 1992, WDW 1992). However, certain populations including the Chiwawa River and Rimrock Lake appear to be stable. In Rimrock Lake and Indian Creek (spawning tributary) redd counts increased from 29 in 1986, to 140 in 1993 (Yakima County Bull Trout Status 1994; E. Anderson, WDW, *in litt.* 1994). The Chiwawa River is recognized as having one of the stronger populations in the mid-Columbia River (Brown 1992). While long-term trend data on the Chiwawa River and tributaries were not available during 1991, 348 bull trout redds were counted in this system.

Snake River and Tributaries

Historically, bull trout were likely widely dispersed throughout the Snake River drainage, limited only by natural passage and thermal barriers (Esch and Hallock, citing others). Current distribution is primarily relegated to tributaries to the mainstem Snake River upstream to and including the Boise River (Esch and Hallock, citing others). Major tributaries of the Snake River in Oregon currently supporting bull trout populations include the Tucannon, Grande Ronde, Imnaha, and the Malheur. In Idaho, bull trout can be found in the Clearwater, Salmon, Weiser and Boise river drainages.

Ratliff and Howell (1992) compiled a status assessment of Oregon bull trout populations. Status was determined subjectively based on relative abundance, suppressing factors, and recovery potential of identified populations. In the 29 Oregon tributaries of the Snake River where bull trout are found, 7 percent are considered to be at high risk of extinction, while 14 percent are thought to be at low risk (Ratliff and Howell 1992). The majority of bull trout populations are either at moderate risk (38 percent) or are of special concern (34 percent). Seven percent of the examined populations are considered to be extinct. Of the 29 populations, 62 percent are classified as remnant, while 76 percent of the populations have a current status of unknown. Based on limited information, a few tributaries, including portions of the Grande Ronde, Minam River, and the North Fork of the Malheur, appear to have viable bull trout populations (Ratliff and Howell 1992, Bowers et al. 1993). Of the 10 identified Snake River bull trout populations occurring in Washington, the status of 40 percent are declining, 30 percent stable, and 30 percent unknown (WDW 1992).

The quality and quantity of bull trout information for Snake River tributaries in Idaho is poor. Limited spot surveys indicate that bull trout may be widespread throughout the Clearwater and Snake River drainages. However, the lack of identified populations and associated trend information complicates status evaluation. The Rapid River is one of the largest remaining bull trout populations for which long-term trend information is available. Bull trout counts from a fish weir on this Salmon River tributary averaged 206 fish between 1973–91 (Rieman and McIntyre 1993).

Analysis by Rieman and McIntyre (1993) calculated a probability of 100-year persistence for Rapid River bull trout. Using weir counts taken over a period of 19 years, the authors assumed a 1:1 sex ratio and one female per redd to approximate the mean number of redds per year in the spawning escapement. Based on this information, an extinction threshold of 10 redds, alternate year spawning, and an instantaneous growth rate of zero, the Rapid River population had a 58 percent probability of persistence. When the actual estimate for instantaneous growth rate was used, the probability for persistence increased to 74 percent.

Population trend data is also lacking for bull trout in the Weiser, Payette, and Boise rivers. IDFG (1993) suggested that bull trout were widely distributed in the Payette and Boise rivers, but restricted to only two tributaries in the Weiser River. Density estimates for Sheep and Anderson creeks of the Weiser drainage ranged from 2.8 to 5.2 bull trout/100 square meters in 1992 (IDFG 1993), but no earlier data was reported to establish a trend. Neither historical nor current abundance data is available for the Payette or Boise rivers, but Renstrom (no affiliation, *in litt.* 1993) indicated that bull trout are quite common in the upper reaches of the North Fork Boise River and Johnson Creek; they often dominate the sport catch in these systems.

Lower Columbia River

The lower Columbia River encompasses a large geographic area including portions of Washington and Oregon. The lower Columbia River includes the mainstem Columbia River and all tributaries below the Snake River confluence. Major tributaries include the John Day, Deschutes, and Willamette rivers.

The 1994 administrative record on bull trout status in the lower Columbia River is largely incomplete. A significant portion of bull trout status information for Washington and Oregon is unknown (USDA 1993, WDW 1992). Where sufficient data existed to determine status, 40 percent were declining, 5 percent stable, and 15 percent secure. The status of the remaining 40 percent of lower Columbia River populations in Oregon was unknown. Of the six lower Columbia River bull trout populations identified in Washington all are considered remnant, with 17 percent classified as stable, and 83 percent as ‘‘status unknown’’ (WDW 1992).

Based on the 1994 administrative record, bull trout populations within the lower Columbia River have declined from historic levels. Remaining populations are generally considered to be isolated and remnant (Ratliff and Howell 1992, USDA 1992). Historic bull trout populations of the lower Columbia River consisted of adfluvial, fluvial, and resident components. While each lifecycle is still represented, the resident form is dominant, followed by the fluvial, and adfluvial (USDA 1992).

Within the Oregon portion of the lower Columbia River, 23 percent of bull trout populations are considered to be at a high risk of extinction, while 15 percent are thought to be at a moderate risk, 12 percent of special concern, 19 percent at low risk, and 31 percent are extinct (Ratliff and Howell 1992). In Washington, using a different risk assessment method (WDW 1992), only the bull trout population in Yale Reservoir was considered at risk (moderate). The remaining five bull trout populations were not evaluated with respect to risk of extinction due to a ‘‘status unknown’’ classification (WDW 1992).

The primary tributaries to the lower Columbia River still containing bull trout are the Walla Walla, Umatilla, John Day, Deschutes, Hood, Lewis, and Willamette rivers. With the exception of the Deschutes River basin, remaining populations are dominated by small, isolated, remnant populations. Long-term population trend information contained in the 1994 administrative record is incomplete or lacking for the remaining bull trout populations. Where information was available, the low abundance, and fragmented nature of these headwater populations is apparent.

An example of the variable and contradictory information found in the 1994 administrative record is illustrated by the John Day River basin. Based on bypass trap information from 1971–1992, bull trout counts on the Upper John Day River have been as high as 345 in 1973 to as low as 12 in 1988 (ODFW 1993). While the 1971–80 average of 152 was larger than the 1981–92 average of 95, the mean counts were not statistically different ($p \leq 0.05$), and the 1992 bull trout count (232) was the third highest on record. Ratliff and Howell (1992) consider the Upper John Day River to be at moderate risk of extinction. Similar trend information in the Middle Fork or the North Fork of the John Day was not available. These populations are isolated and occur at low numbers, and Ratliff and Howell (1992) considered Middle Fork to be at high risk and North Fork of special concern.

The quality of bull trout population status information varies in the Umatilla, Walla Walla, Hood, Willamette, and Lewis rivers. Populations in the Umatilla, Walla Walla, and Hood rivers are considered at low risk or of special concern (Ratliff and Howell 1992, WDW 1992). Other populations in the Hood and Willamette systems are considered to be at high risk of extinction. Based on direct counts and professional judgement these populations are isolated via impoundments or habitat degradation and are at low levels. Ratliff and Howell (1992) considered these populations to be at moderate to high risk of extinction.

The strongest remaining population of bull trout in the lower Columbia River is the adfluvial population located in the Deschutes River basin. Lake Billy Chinook and the Metolius River still support a viable population bull trout as documented by increasing redd counts from 1986–93 (Ratliff 1994). This population has benefitted from restrictions in harvest regulations and is considered at low risk of extinction (Ratliff and Howell 1992). Shitike Creek below lake Billy Chinook still supports a relatively good population of fluvial bull trout, which Ratliff and Howell (1992) considered to be at low risk of extinction. The remaining bull trout populations in the Deschutes system are not doing as well. Bull trout populations in the upper Deschutes are either extinct or considered to be at high risk of extinction in the future (Ratliff and Howell 1992).

Summary of Columbia River Population Segment

Based on the 1994 administrative record, bull trout populations within the upper Columbia River have declined from historic levels (Thomas 1992 and USDA 1993). Overall, remaining populations are generally considered to be isolated and remnant (Rieman and McIntyre 1993, Thomas 1992, USDA 1993). Fluvial bull trout populations in the upper Columbia River portion of the distinct population segment appear to be nearly extirpated. Resident populations existing in headwater tributary reaches are isolated and generally low in abundance (Thomas 1992). Based on information in the 1994 record, bull trout in Flathead Lake and Lake Pend Oreille appear to be declining. The adfluvial population in Swan Lake appears to be increasing and represents the healthiest remaining population.

The 1994 administrative record on bull trout populations within the Snake River and tributaries is largely incomplete. However, with the lack of passage barriers, historic distribution throughout the system was probable. Overall, the lack of specific trend information for the Snake River made the analysis of population status difficult. Certain populations appeared to be stable, while others were at a moderate to high risk of extinction (Ratliff and Howell 1992).

Historic distribution of bull trout within the lower Columbia River cannot be verified, but adfluvial, fluvial, and resident forms were likely widely distributed throughout the area (Ratliff and Howell 1992). Current distribution is fragmented with dispersed remnant populations of resident and fluvial bull trout inhabiting tributaries (Ratliff and Howell 1992, USDS 1993, WDW 1992). Certain populations appeared to be stable, while others were at high risk of extinction (Ratliff and Howell 1992, WDW 1992).

The general trend of bull trout populations in the Columbia River population segment where status is known is declining. An examination of 386 bull trout populations in the Columbia River population segment indicated that 33 percent are declining, 15 percent stable, 3 percent secure, and 2 percent increasing (Ratliff and Howell 1992, USDA 1993, and WDW 1992). The population status of the remaining 47 percent is unknown. Of the 386 bull trout populations, 44 percent are considered remnant, 30 percent not remnant, and 26 percent unknown (Ratliff and Howell 1992, USDA 1993, WDW 1992).

Previous Federal Action

On September 18, 1985, the Service published an animal notice of review in the **Federal Register** (50 FR 37958) designating the bull trout a category 2 candidate for listing in the coterminous United States. Category 2 taxa were those for which conclusive data on biological vulnerability and threats were not currently available to support proposed rules. The Service published updated notices of review for animals on January 6, 1989 (54 FR 554), and November 21, 1991 (56 FR 58804), reconfirming the bull trout category 2 status. The Service elevated bull trout in the coterminous United States to category 1 for Federal listing on November 15, 1994 (59 FR 58982). Category 1 taxa were those for which the Service had on file substantial information on biological vulnerability and threats to support preparation of listing proposals. Upon publication of the February 28, 1996, notice of review (61 FR 7596), the Service ceased using category designations and included the bull trout as a candidate species. Candidate species are those for which the Service has on file sufficient information on biological vulnerability and threats to support proposals to list the species as threatened or endangered.

On October 30, 1992, the Service received a petition to list the bull trout as an endangered species throughout its range from the following conservation organizations in Montana: Alliance for the Wild Rockies, Inc., Friends of the Wild Swan, and Swan View Coalition (petitioners). The petitioners also requested an emergency listing and concurrent critical habitat designation for bull trout populations in select aquatic ecosystems where the biological information indicates that the species is in imminent threat of extinction. A 90-day finding, published on May 17, 1993 (58 FR 28849), determined that the petitioners had provided substantial information indicating that listing of the species may be warranted. The Service initiated a rangewide status review of the species concurrent with publication of the 90-day finding.

On June 6, 1994, the Service concluded in the original 12-month finding that listing of bull trout throughout its range was not warranted due to unavailable or insufficient data regarding threats to, and status and population trends of, the species within Canada and Alaska. However, the Service determined that sufficient information on the biological vulnerability and threats to the species was available to support a warranted finding to list bull trout within the coterminous United States. Because the Service concluded that the threats were imminent and moderate to this population segment, the Service gave the bull trout within the coterminous United States a listing priority number of 9. As a result, the Service found that listing a distinct vertebrate population segment of bull trout residing in the coterminous United States was warranted, but precluded due to higher priority listing actions.

On November 1, 1994, Friends of the Wild Swan, Inc. and Alliance for the Wild Rockies, Inc. (plaintiffs) filed suit in the Federal District Court of Oregon arguing that the warranted but precluded finding was arbitrary and capricious. After the Service issued a ''recycled'' 12-month finding for the coterminous population of bull trout on June 12, 1995, the district court issued an order declaring the plaintiffs' challenge to the original finding moot. The plaintiffs declined to amend their complaint and appealed to the Ninth Circuit Court of Appeals, which found that the plaintiffs' challenge fell ''within the exception to the mootness doctrine for claims that are capable of repetition yet evading review.'' On April 2, 1996, the circuit court remanded the case back to the district court. On November 13, 1996, the district court (Court) issued an order and opinion remanding the original finding to the Service for further consideration. Included in the instructions from the Court were requirements that the Service limit its review to the 1994 administrative record, and incorporate any emergency listings or high magnitude threat determinations into current listing priorities. In addition, reliance on other Federal agency plans and actions was precluded. The reconsidered 12-month finding was delivered to the Court on March 13, 1997. This finding determined that the Klamath River and Columbia River population segments warranted listing based on the 1994 administrative record.

On March 24, 1997, the plaintiffs filed a motion for mandatory injunction to compel the Service to issue a proposed rule to list the Klamath and Columbia bull trout populations within 30 days based solely on the 1994 administrative record. In response to this motion, the Service ''concluded that the law of this case requires the publication of a proposed rule'' to list the two warranted populations. On April 4, 1997, the Service requested 60 days to prepare and review the proposed rule. In a stipulation between the Service and plaintiffs filed with the Court on April 11, 1997, the Service agreed to issue a proposed rule in 60 days to list the Klamath River population of bull trout as endangered and the Columbia River population of bull trout as threatened based solely on the 1994 record. As a result, the Service did not consider any information received since the close of the 1994 record in the development of this proposal.

The processing of this proposed rule conforms with the Service's final listing priority guidance published in the **Federal Register** on December 6, 1996 (61 FR 64475). The guidance clarifies the order in which the Service will process rulemakings during fiscal year 1997. The guidance calls for giving highest priority to handling emergency situations (Tier 1), second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings, and third priority (Tier 3) to new proposals to add species to the list of threatened and endangered plants and animals. This proposed rule constitutes a Tier 3 action.

Summary of Factors Affecting These Species

Procedures found in section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Klamath River population segment and Columbia River population segment of bull trout (*Salvelinus confluentus*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* According to the 1994 administrative record, many instream habitat features have been significantly impaired as a result of land management activities, including forest management and road building, hydropower and irrigation diversions, mining, and grazing (Chamberlain et al. 1991, Craig and Wissmar 1993, Frissell 1993, Furniss et al. 1991, Isaacson 1994, Meehan 1991, Nehlsen et al. 1991, Salo and Cundy 1987, Sedell and Everest 1991). Based on a survey of biologists, only 18 percent of all bull trout populations and stream segments rangewide are not threatened by degraded habitat conditions (USDA 1993). Adverse impacts to bull trout habitat and populations due to land management practices have been documented throughout the species' range in the conterminous United States (Brown 1992, Fraley and Shepard 1989, Goetz 1989, Howell and Buchanan 1992, Isaacson 1994, Meehan and Bjorn 1991, Platts et al. 1993, Pratt 1992, Pratt and Huston 1994, Rieman and McIntyre 1993, Shepard et al. 1984a, 1984b, Thomas 1992, USDA 1993, Weaver and Fraley 1991, WDW 1992). While some bull trout persist in ''managed'' drainages (Hicks, Plum Creek Timber Company, *in litt.*, 1993), it is likely that these populations are at risk of extinction (Rieman and McIntyre 1993).

Forest management has degraded bull trout habitat throughout the species' range. Logging and road building activities threaten bull trout populations within and downstream of managed areas through increased sediment production and delivery to streams, reduced streamside canopy closure, increased stream temperatures, and reduced woody debris recruitment (Chamberlain et al. 1991, Furniss et al. 1991, Weaver and Fraley 1991, Thomas 1992, Isaacson 1994). Thousands of miles of logging roads and vast acreage of recently logged watersheds will continue to impact hydrologic functions and habitat quality throughout the species' range for at least several decades (Isaacson 1994).

While forest management activity is cited as a contributor to bull trout population decline, the precise impact of a specific activity or accumulation of activities on the abundance, resilience or long-term persistence of a population is unknown (USDA 1993). Haugen (1991) estimated that salmonid habitat had been reduced in the Columbia Basin by about 24 percent in the past century as a result of these land management practices. On National Forests, most habitat alterations occurred during the period 1940–1970 when forest management focused on commodity resources.

Dam and reservoir construction and operation have significantly altered major portions of the riverine habitats of bull trout throughout the Columbia River Basin. Numerous dams without adequate fish passage have created barriers to fluvial and adfluvial bull trout, precluding access to former spawning, rearing, and migration habitats (Craig and Wissmar 1993, WDW 1992b, ODFW 1993). Altered hydrographs and water quality conditions may also degrade bull trout forage bases (Marotz 1993). Many migratory bull trout populations associated with mainstem river systems have been extirpated due to the construction of dams, particularly in the Columbia Basin (Brown 1992, Goetz 1991, WDW 1992a, ODFW 1993). The completion of McCloud Dam in 1965 has been cited as the primary cause of bull trout extirpation from California (Rode 1990).

Connectivity within and between watersheds is essential for maintaining aquatic ecosystem functions and healthy bull trout populations (Rieman and McIntyre 1993). Numerous hydroelectric and water storage dams currently isolate a large number of bull trout populations rangewide. The construction of hydropower dams on major river tributaries has isolated upper basin populations, and eliminated the downstream fluvial or adfluvial life history forms dependent on upstream spawning habitat. Irrigation and hydroelectric dams, large and small, have blocked bull trout migration in almost all drainages in the Pacific Northwest and converted riverine habitats into reservoir habitats (Platts et al. 1993). In many instances, natural recolonization of historically occupied bull trout sites has become impossible. But, movement of introduced species or undesirable species may also be controlled by a dam, thus, enabling bull trout to utilize historic habitats without competition from non-indigenous species.

Impacts associated with agriculture, including irrigation and water storage activities, have adversely impacted bull trout habitat. Agricultural activities reduce streamside cover, increase sedimentation, and introduce point and non-point source pollution. Unscreened irrigation diversions likely trap juvenile bull trout migrating downstream (Ratliff and Howell 1992).

Grazing impacts to salmonid habitat have been described by many authors (Platts 1991, Elmore and Beschta 1987, Meehan and Platts 1978). Improper livestock grazing negatively affects bull trout by reducing riparian vegetation, changing stream morphology and increasing soil erosion. These alterations degrade thermal and structural habitat conditions and water quality for bull trout, and compound the negative impacts of human activities.

Mining has adversely affected bull trout and their habitats in Idaho, Montana, Oregon, and Washington (Coeur d'Alene Tribe of Idaho et al. 1991, Johnson and Schmidt 1988, Martin and Platts 1981, Platts et al. 1993, USDA 1992, USDA 1993, WDW 1992b). Mining can degrade aquatic systems by producing sediment and toxic heavy metals, altering water acidity levels, and changing stream channels and flow (Esch and Hallock, citing others).

Klamath River Population Segment

The migratory life history forms (fluvial and adfluvial) of bull trout in the Klamath Basin have been lost because the habitat and migratory corridors that once supported these fish have been degraded to an unsuitable condition. This degradation appears to have been caused primarily by the loss of riparian vegetation and water withdrawals, but channelization of Sun Creek and a few other streams near Crater Lake has also been blamed for the loss of migratory fish. Land ownership and agricultural practices in the basin suggest that the loss of riparian vegetation is due to livestock grazing, timber harvest, and road construction. Ziller (*in litt.* 1992) noted that the removal of the riparian canopy increased stream temperatures. Water withdrawals at irrigation diversions are common in the basin, and occur on most streams where bull trout reside (OCAFS 1993). Because these diversions are unscreened and unregulated in regard to minimum flow and/or maximum withdrawal, direct loss of fish has been suggested and downstream areas have become entirely dewatered or unsuitable for bull trout due to low water flows and associated increasing temperatures (OCAFS 1993). These factors have rendered much of the basin unsuitable habitat for bull trout, and have isolated small resident populations in extreme headwater areas where suitable habitat still exists (Ziller 1992, Ratliff and Howell 1992). Irrigation, livestock grazing, timber harvest, and road construction is expected to continue in the basin along with the associated impacts to aquatic habitat. Based on the 1994 record, the present or threatened destruction, modification, or curtailment of bull trout habitat or range threatens the Klamath River distinct population segment of bull trout.

Columbia River Population Segment

Bull trout populations in the Columbia River population segment face a number of threats from habitat degradation and passage problems. Isaacson (1994) documented extensive habitat degradation of watersheds in Idaho and Montana. Suitable bull trout habitat on National Forest lands west of the Continental Divide have been impacted by land management practices including logging, road building, and grazing. Based on a survey of National

Forests reported by Isaacson (1994), a significant portion of watersheds on the Clearwater (71 percent), Nez Perce (67 percent), Kootenai (42 percent), Lolo (65 percent), Bitterroot (66 percent), Flathead (44 percent), and Idaho Panhandle National Forests (64 percent) have been moderately to severely degraded. Moreover, a large number of National Forests in Idaho and Montana do not meet existing Forest Plan standards for woody debris, pool/riffle ratios and other stream habitat parameters correlated with bull trout persistence (Isaacson 1994). Only 31 percent of streams in the Lake Pend Oreille basin meet Forest Plan standards for stream habitat attributes, and most of these streams (52 percent) are in the most degraded category. Such land management practices have deleterious effects on bull trout populations. In the Flathead River drainage, decreased survival of early life history stages was associated with increases in deposition of fine sediments in spawning gravel (Shepard 1984a, Weaver and Fraley 1991).

High water temperature is considered to be a factor limiting bull trout in certain Washington systems (Craig and Wissmer 1993). The negative impacts of grazing appear to be major factors in habitat degradation in Oregon and Idaho (USDA 1993). Grazing is identified as a major cause of habitat degradation in 15 of 34 streams/stream reaches supporting bull trout populations in the Clearwater River basin (USFS, *in litt.*, 1993). In Washington, for instance, agriculture was identified as being one of the greatest sources of non-point source pollution to rivers and streams (Edwards et al. 1992 *in* USDA 1994). Water quality in the Yakima River system has been degraded due to agricultural activities (WDE 1992).

Based on re-surveys of five rivers in the Lower Columbia, Sedell and Everest (1991) documented a loss of large pools during the past 50 years due to grazing, road construction, dredge mining, agricultural practices, and forest management. On the Middle Fork Salmon River in Idaho, large pool density has decreased 52 percent in some tributaries. On the Grande Ronde, Willamette, and Lewis and Clark rivers in Oregon the concentration of large pools has decreased by 67, 41, and 60 percent, respectively. Only tributaries in the Yakima River basin in Washington exhibited an increase (27 percent) in pool density.

Habitat degradation as the result of mining related activities in Montana has resulted in the extinction of some populations and the reduction of others (Thomas 1992). The upper Clark Fork above Milltown Dam in Montana has been contaminated by high levels of arsenic, cadmium, copper, lead, and zinc from large-scale copper mining and mineral processing. As a result, four Superfund sites have been designated in this area, and tests indicate that contamination has caused substantial reductions in the number, growth, and diversity of trout (RCG/Hagler, Bailly, Inc. 1993). Bull trout have likely been among the fish impacted, as only a few scattered headwater populations of bull trout currently exist. Entire drainages within the Clearwater and Salmon River basins have been severely degraded by past gold dredge mining practices (Esch and Hallock, no date). Mining continues in two streams with bull trout in the North Fork Clearwater River (C. Huntington, Clearwater Biostudies, pers. comm. 1993).

Irrigation practices restrict bull trout migrations and isolate populations from historical mainstem habitats in the Snake, Yakima, Walla Walla, Powder, Malheur, Grande Ronde, Umatilla, John Day, Clark Fork, and Bitterroot rivers (ODFW 1993, Thomas 1992, WDW 1992b). Dorratcaque (1986) documented chronic flow and passage problems on the Lemhi River of Idaho, where a complete lack of flow has occurred during the migration period. Over 80 percent of the annual stream flow in the Yakima subbasin is diverted for irrigation purposes and return flows account for 90 percent of the lower-river flow during the irrigation season (WDE 1992). Bull trout in this subbasin are now isolated in upper tributaries and are at high risk of extinction (WDW 1992b).

In addition to the negative effects associated with improper land management practices, habitat fragmentation due to hydroelectric impoundments have significantly impacted bull trout populations. Numerous impoundments throughout the Columbia Basin have isolated populations and altered mainstem habitat. Hydroelectric facilities such as Albeni Falls (1952), Noxon Rapids (1958), Cabinet Gorge (1951), and Milltown (1906) in the Clark Fork/Pend Oreille system have eliminated or reduced adfluvial and fluvial populations (Paragamian and Ellis 1993, Pratt and Houston 1993, and Thomas 1992). Similar consequences have occurred on the Flathead River where Kerr, Big Fork, and Hungry Horse Dams curtail population interchange (Fraley et al. 1989). Bull trout populations in Montana and northern Idaho are functionally isolated from lower Columbia River populations by a number of mainstem River impoundments including Chief Joseph and Grand Coulee Dams. The mainstem Columbia and Snake rivers are fragmented by 11 hydroelectric facilities. In addition, smaller impoundments are numerous throughout the system and have isolated bull trout populations in Montana, Idaho, Washington, and Oregon (USDA 1993). New hydropower development continues to occur, primarily for small hydropower facilities. For example, the Horseshoe Bend Project on the Payette River in Idaho, would involve a diversion dam and powerhouse that could cause bull trout migration problems and habitat losses from dewatering. Other examples of segregation due to hydropower include three dams along the Lewis River in southwest Washington, all built without passage facilities.

Although bull trout are widely distributed throughout the Columbia River population segment, individual populations are highly fragmented, and most populations are isolated and remnant. Of those populations where status is known and population data exist, the general trend in this distinct population segment is declining. A few populations, however, are considered stable or increasing, and are represented in parts of the Swan, Deschutes, Grande Ronde, Tucannon, and Malheur River basins. Documented habitat losses from timber harvest, grazing, mining, and hydropower are widespread and expected to continue throughout the distinct population segment. Based on the 1994 record, the present or threatened destruction, modification, or curtailment of bull trout habitat or range threatens the Columbia River distinct population segment of bull trout.

B. *Overutilization for commercial, recreational, scientific,* or *educational purposes.* According to the 1994 administrative record, bull trout historically have been targeted by anglers and government agencies who viewed the species as undesirable because of its piscivorous habits (Bond 1992). As recently as 1990, programs were conducted to remove bull trout through outright killing of fish, bounties, and poisoning of waterways (Simpson and Wallace 1978, Ratliff and Howell 1992, ODFW 1993, Newton and Pribyl 1994).

Many bull trout populations were intensely harvested prior to the implementation of restrictive angling regulations (Brown 1992, ODFW 1993, WDW 1992b). Overharvest (both legal and illegal) can seriously threaten populations already reduced by factors such as competition, degraded habitat, and isolation (Fraley et al. 1989, Brown

1992a, Craig and Wissmar 1993). Forty-two percent of all populations across the range were considered suppressed due to accessibility and overharvest (USDA 1993).

In recognition of the decline of bull trout populations rangewide, harvest regulations have become significantly restrictive in recent years. While certain introduced fish, such as small rainbow trout, may provide supplemental forage for large adult bull trout (Faler 1991, Pratt 1992, ODFW 1993), introductions have been shown to increase the risk of incidental and illegal harvest (Rode 1990, Bond 1992, WDW 1992b). Unfortunately, illegal poaching of bull trout continues and especially threatens small populations (WDW 1992b; Pratt and Huston 1993; USDA 1993; Goetz, pers. comm. 1994, Perkinson, Kootenai National Forest, *in litt.*, 1994).

Electrofishing-induced injury may pose a new threat to bull trout because of the dramatic rise in bull trout inventories using electrofishing techniques (Horton, pers. comm. 1993). If electrofishing is not conducted properly, bull trout may suffer mortality or injury (Fredenberg 1992; McMichael 1993; Sharber and Carothers 1988; Fredenberg, Fish and Wildlife Service, pers. comm. 1993).

Klamath River Population Segment

Though recreational harvest of adult bull trout likely contributed to the historical decline of the species, harvest has been curtailed since a regulatory ban was imposed in 1992. Because angling for other trout species continues, OCAFS (1993) suggested that incidental mortality may occur on bull trout in spite of their no-harvest regulation. This claim is speculative, however, and it is not supported in the 1994 record. As a result, the overutilization of bull trout for commercial, recreational, scientific, or educational purposes does not threaten the Klamath Basin population segment based on the 1994 record.

Columbia River Population Segment

Historic harvest in the range of the Columbia River population segment likely contributed to the observed decline of bull trout. In the past, harvest included legal recreational angling, poaching, and directed eradication programs (Thomas 1992). Statewide angling regulations have recently become more restrictive in an attempt to protect bull trout throughout Montana, Idaho, Oregon and Washington. Oregon, Idaho, and Montana have adopted much more restrictive statewide angling regulations for harvest fisheries associated with Lake Billy Chinook, Lake Pend Oreille, and Flathead Lake. Those areas of Oregon where bull trout are in the most precarious situations (including the Willamette, Hood, Malheur, Powder, and Pine rivers) are now closed to fishing (Ratliff and Howell 1992). In an effort to protect bull trout from recreational harvest, the Washington Department of Fish and Wildlife has prohibited take of bull trout in eastern Washington and in the lower Columbia River (Brown 1992). While undocumented, poaching may still be a problem in certain areas of the Columbia River population segment, especially for large adfluvial and fluvial adults. However, because angling restrictions are in place and legal harvest is limited to only a few large populations, the overutilization of bull trout for commercial, recreational, scientific, or educational purposes in the Columbia River population segment is not substantiated in the 1994 record.

C. *Disease and predation*. Disease is not believed to be a critical factor in the long-term health and survival of bull trout populations. Predation on juvenile bull trout by non-native fish species, such as lake, brown, and brook trout, is a recent and potentially serious threat to some populations (Pratt and Huston 1993, Rieman and McIntyre 1993).

Klamath River Population Segment

Exotic fish species have been introduced into Klamath Basin streams, and either brown or brook trout reside in conjunction with bull trout in all but one of the seven remaining populations (Ziller 1992, Ratliff and Howell 1992). The most significant threat by introduced species to bull trout is hybridization (see section E. *Other natural or manmade factors affecting its continued existence*). Although the potential for predation prevails, no evidence in the 1994 record suggests that predation occurs in this population segment. Neither Ratliff and Howell (1992) or OCAFS (1993) considered predation to be a threat to bull trout in the Klamath Basin. Based on the administrative 1994 record, disease or predation do not threaten the Klamath Basin population segment.

Columbia River Population Segment

Little information exists for the Columbia River population segment that implicates predation or disease as a significant factor for bull trout decline. Introductions of non-native fish present the most serious threat through hybridization (see section E. *Other natural or manmade factors affecting its continued existence*). However, lake trout populations have increased in Flathead Lake and resulted in the expansion of lake trout into the Flathead River system (Vashro et al. 1992), where they may prey on emigrating juvenile bull trout (Thomas 1992; Fredenberg, pers. comm. 1994). Similarly, bull trout population declines in Priest Lake, Idaho, appear to be correlated with the abundance of lake trout (Mauser 1985, Pratt and Houston 1993) and may be due to either competition or predation. Nonetheless, based on administrative 1994 record, disease does not threaten the Columbia River population segment and the threat posed by predation is limited and not substantiated for the entire population segment.

D. *The inadequacy of existing regulatory mechanisms.* Implementation of Federal and State laws designed to conserve fish resources or maintain water quality has been inadequate to prevent past and ongoing habitat degradation and population fragmentation. Deficient agency funding, competing implementation priorities and the large multi-state/international geographic area have contributed to this inadequacy. In addition, conservation measures provided for in many additional regulations are merely advisory to action agencies. Federal laws include the Fish and Wildlife Coordination Act; National Forest Management Act; Federal Land Policy and Management Act; Oregon and California Act; Clean Water Act; Rivers and Harbors Act; Federal Power Act; Pacific Northwest Electric Power Planning and Conservation Act; and Comprehensive Environmental Response, Compensation, and Liability Act. State laws include the Montana Stream Protection Act, Montana Natural Streambed and Land Preservation Act, and the Washington Forest Practices Act. In response to population declines, State fisheries agencies throughout the range have imposed increasingly restrictive harvest regulations for bull trout.

Klamath River Population Segment

Though historic harvest in the Klamath River basin likely contributed to the decline of bull trout, no information is provided in 1994 record to suggest that harvest, or the inadequacy of environmental rules and regulations now threaten bull trout. Given that legal harvest has been stopped since 1992, the 1994 record does not document inadequate existing regulatory mechanisms for the Klamath River population segment.

Columbia River Population Segment

Historic harvest in the Columbia River Basin likely contributed to the decline of bull trout (Ratliff and Howell 1992, Thomas 1992). Harvest included legal recreational angling, poaching, and directed eradication programs (Thomas 1992). Idaho, Montana, and Oregon have since adopted much more restrictive harvest regulations for the stronghold fisheries of Lake Pend Oreille, Flathead Lake, and Lake Billy Chinook. Fishing seasons are closed to the harvest of bull trout in virtually all other waters of this distinct population segment outside of Canada. However, implementation of Federal and State laws designed to conserve fish resources or maintain water quality has been inadequate to prevent past and ongoing habitat degradation and population fragmentation. Deficient agency funding, competing implementation priorities and the large multi-state/international geographic area have contributed to this inadequacy. Thus, given the above and that the general trend of bull trout populations in this distinct population segment is declining, the 1994 record suggests that existing regulatory mechanisms for the Columbia River distinct population segment are inadequate.

E. *Other natural or manmade factors affecting its continued existence.* Isolation, competition, and hybridization with introduced species adversely impact the persistence and viability of bull trout populations. Widespread introduction of non-native species across the range of bull trout has frequently resulted in serious population declines and extirpations (Bond 1992, Donald and Alger 1993, Howell and Buchanan 1992, Leary et al. 1993, Markle 1992, Platts et al. 1993, Pratt and Huston 1993, Rieman and McIntyre 1993, Isaacson 1994). Fish introductions significantly affect the persistence of populations, particularly when occurring in concert with habitat degradation and extirpated migratory life history forms (Rieman and McIntyre 1993).

Introduced brook trout have become established throughout much of the range of bull trout and hybridization seriously threatens the persistence of bull trout populations (Leary et al. 1993; Markle 1992; Rieman and McIntyre 1993; Thomas 1992, WDW 1992a and 1992b). Hybridization results in offspring that are nearly always sterile, eventually eliminating bull trout from a system (Leary et al. 1993). Life history differences between the two species (brook trout mature faster and have a higher reproductive rate) favor brook trout where ranges overlap (Thomas 1992). This threat is exacerbated when larger, migratory forms of bull trout have been eliminated and gene flow is prevented by the isolation of remnant bull trout populations.

Non-native lake trout are dominant and are able to displace bull trout where niche overlap and potential competition between the two species is substantial (Donald and Alger 1993). In two cases, introduced lake trout have replaced bull trout in less than 30 years (Donald and Alger 1993). In another case, lake trout appear to be in the process of replacing bull trout in Flathead Lake, which was considered a stronghold for bull trout (Thomas 1992, Weaver 1993).

Non-native brown trout and bull trout are likely to be in direct competition in numerous drainages (Platts et al. 1993, Pratt and Huston 1993, Ratliff and Howell 1992). Pratt and Huston (1993) note that brown trout and bull trout achieve similar sizes and have overlapping spawning seasons, which may result in disruption of bull trout redds and competition for resources.

A variety of mechanisms are responsible for isolating bull trout populations across their range. Isolation may occur directly, resulting from barrier structures (e.g., dams, weirs, culverts, stream diversions), or indirectly as a result of degraded habitat conditions (e.g., altered thermal regimes, dewatered stream reaches, channelization). Once isolated, bull trout populations face relatively high probabilities of extinction due to loss of gene flow and relatively low population size (Rieman and McIntyre 1993).

Klamath River Population Segment

Perhaps the most significant threat to the remaining bull trout populations in the Klamath Basin is hybridization with introduced brook trout. Where the two species reside together, bull trout abundance is alarmingly low, and hybrids are common; only four populations exist in the absence of brook trout and these populations are the most abundant populations in the basin (Ratliff and Howell 1992, Ziller, 1992). Bull trout have recently gone extinct in the Upper Sycan River and Sevenmile Creek, which now contain only brook trout and hybrids (Ratliff and Howell 1992). Because bull trout † brook trout hybrids are almost always sterile, the loss of the less numerous parental species (typically bull trout) inevitably occurs (Leary et al, 1992). Differences in life history and habitat tolerances between the species also tend to favor brook trout.

Competition with introduced brook and brown trout particularly may threaten bull trout in the Klamath Basin because only one of the seven remaining populations exist in the absence of these species (Ratliff and Howell 1992, Ziller 1992). Population declines, however, have not been attributed to competition in the basin like they have been to hybridization and habitat loss.

The seven remaining populations of bull trout in the Klamath Basin are isolated from one another by degraded, unsuitable habitat. In addition, four of these populations have a total population size of fewer than 500 individuals (all age classes represented) (B. Hooton, ODFW, *in litt.* 1993). Extinction risks increase dramatically when isolated populations decrease in size and/or metapopulations become further fragmented (Rieman and McIntyre 1993). In addition, the restriction of gene flow among isolated populations compounds these threats and reduces genetic diversity and the associated plasticity of populations to withstand extreme environmental conditions (Rieman and McIntyre 1993). These situations are prominent within the Klamath River population segment. Based on the documented hybridization and human-induced isolation described in the 1994 record, other natural or manmade factors pose a threat to the continued existence of the Klamath River population segment.

Columbia River Population Segment

In parts of the Columbia River Basin, non-native introductions seriously threaten bull trout populations. Where bull trout occur with brook trout, the threat of hybridization, loss of genetic integrity, and production of sterile offspring is a major concern (Ratliff and Howell 1992; Thomas 1992; Esch and Hallock, no date; USDA 1992). Forty-five percent of the bull trout populations in Oregon evaluated by Ratliff and Howell (1992) were considered at risk from brook trout. Populations that are at greatest risk are resident forms occurring predominantly in the headwater tributary reaches. Adfluvial and fluvial bull trout appear to be at less risk (Ratliff and Howell 1992). However, adfluvial and fluvial bull trout are in direct competition with non-native lake trout in certain areas such as Priest Lake, Idaho (Pratt and Houston 1993). Bull trout displacement by lake trout is of special concern in Flathead Lake, Montana and Lake Pend Oreille, Idaho, which have been considered strongholds for bull trout (Thomas 1992, Weaver 1993). Based on the documented hybridization and competition from introduced brook and lake trout described in the 1994 record, other natural and manmade factors pose a threat to the continued existence of the Columbia River population segment.

The Service has carefully assessed the best scientific and commercial information available in the 1994 administrative record regarding the present and future threats facing the two distinct population segments of bull trout. Determinations by distinct population segment follow.

Klamath River Population Segment

The trend for this distinct population segment is declining based on the 1994 record. Only seven bull trout populations remain, which are isolated and remnant, and occupy only a fraction of the historically available habitat. Larger, more fecund migratory forms have essentially been lost from the entire distinct population segment, with only small, resident fish still existing. Imminent threats from habitat degradation, irrigation diversions, and the presence of non-native brook trout place this distinct population segment at a moderate to high risk of extinction.

Documented evidence for a drastic decline in bull trout in the Klamath River population segment was prominent in the 1994 record. None of the seven remaining populations occupy any more than 2.5 miles of available habitat, and no one population consists of more than 500 individuals (all year classes represented). Because the remaining populations consist of small resident forms with low fecundity, reproductive and natural recovery potential is extremely poor. As a result, their likelihood of persistence in the foreseeable future is uncertain in the absence of special protection and recovery efforts. Based on an evaluation of the 1994 administrative record, the Klamath River population segment is in danger of extinction throughout all or a significant portion of its range, and, thus, this population segment fits the definition of endangered as defined by the Act.

Columbia River Population Segment

Bull trout populations within the Columbia River population segment have declined from historic levels and are generally considered to be isolated and remnant (Rieman and McIntyre 1993, Thomas 1992, USDA 1993, WDW 1992). An examination of 386 bull trout populations in this population segment in the United States indicated that 33 percent were declining, 15 percent stable, 3 percent secure, and 2 percent increasing (Ratliff and Howell 1992, USDA 1993, WDW 1992). The population status of the remaining 47 percent in the United States was unknown, as were those populations in British Columbia in the 1994 record. Because the Service considered known documented trends within a distinct population segment to be representative of the entire population segment, an overall declining trend of bull trout populations in the Columbia River basin was evident based on the 1994 administrative record.

Decrease in bull trout abundance throughout the Columbia River population segment is evident with former stronghold populations in Flathead Lake and Lake Pend Oreille declining. However, examples of stable or increasing populations, such as Swan Lake and Lake Billy Chinook, were also found in this distinct population segment. Because of the species' wide range, scattered distribution, and diversity of life histories in the Columbia River basin, threats from habitat degradation, passage restriction, and non-native brook trout are moderate for bull trout populations in this distinct population segment. Based on the above evaluation of the 1994 administrative record, the Columbia River population segment is likely to become endangered within the foreseeable future throughout all or a significant portion of its range, and, thus, this population segment fits the definition of threatened as defined by the Act.

Critical habitat is not determinable for the two distinct population segments of bull trout included in this proposed rule, for reasons discussed in the ''Critical Habitat'' section of this rule.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific area within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Service regulations (50 CFR 424.12(a)) state that critical habitat is not determinable if information sufficient to perform required analysis of impacts of the designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. Section 4(b)(2) of the Act requires the Service to consider economic and other relevant impacts of designating a particular area as critical habitat on the basis of the best scientific data available. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the conservation benefits, unless to do such would result in the extinction of the species.

The Service finds that the determination of critical habitat is not determinable for these distinct population segments based on the 1994 administrative record. When a ''not determinable'' finding is made, the Service must, within 2 years of the publication date of the original proposed rule, designate critical habitat, unless the designation is found to be not prudent. The Service reached this conclusion because the biological needs of the species in the two population segments are not sufficiently well known to permit identification of areas as critical habitat in the 1994 administrative record. Specifically, no information was available in the 1994 record on the number of individuals required for a viable population throughout the distinct population segment. In addition, the extent of habitat required for recovery of these fish had not been identified. This information is considered essential for determining critical habitat for these population segments. Therefore, the Service finds that designation of critical habitat for these species is not determinable at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Klamath River and Columbia River bull trout population segments occur on lands administered by the U.S. Forest Service and Bureau of Land Management (BLM); various State-owned properties in Oregon, Washington, Idaho and Montana; and private lands. Federal agency actions that may require conference and/or consultation as described in the preceding paragraph include Army Corps of Engineers (Corps) involvement in projects such as the construction of roads and bridges, and the permitting of wetland filling and dredging projects subject to section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*); Federal Energy Regulatory Commission licensed hydropower projects authorized under the Federal Power Act; Forest Service and BLM timber and grazing management activities; Environmental Protection Agency authorized discharges under the National Pollutant Discharge System of the Clean Water Act; and U.S. Housing and Urban Development projects.

The Act and its implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general trade prohibitions and exceptions that apply to all endangered and threatened wildlife, respectively. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23 and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, permits are also available for zoological exhibition, educational purposes, or special purposes consistent with the purpose of the Act.

It is the policy of the Service published in the **Federal Register** on July 1, 1994, (59 FR 34272) to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. The Service believes the following actions would not be likely to result in a violation of section 9:

(1) Actions that may affect bull trout in the Klamath and Columbia River basins and are authorized, funded or carried out by a Federal agency when the action is conducted in accordance with an incidental take statement issued by the Service pursuant to section 7 of the Act;

(2) Possession of Columbia River basin bull trout caught legally in accordance with state fishing regulations.

With respect to both the Klamath River and Columbia River bull trout population segments, the following actions likely would be considered a violation of section 9:

(1) Take of bull trout without a permit, which includes harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting any of these actions, except in accordance with applicable State fish and wildlife conservation laws and regulations within the Columbia River bull trout population segment;

(2) Possess, sell, deliver, carry, transport, or ship illegally taken bull trout;

(3) Interstate and foreign commerce (commerce across state and international boundaries) and import/export (as discussed earlier in this section);

(4) Introduction of non-native fish species that compete or hybridize with, or prey on bull trout;

(5) Destruction or alteration of bull trout habitat by dredging, channelization, diversion, in-stream vehicle operation or rock removal, or other activities that result in the destruction or significant degradation of cover, channel stability, substrate composition, temperature, and migratory corridors used by the species for foraging, cover, migration, and spawning;

(6) Discharges or dumping of toxic chemicals, silt, or other pollutants into waters supporting bull trout that result in death or injury of the species; and

(7) Destruction or alteration of riparian or lakeshore habitat and adjoining uplands of waters supporting bull trout by timber harvest, grazing, mining, hydropower development, or other developmental activities that result in destruction or significant degradation of cover, channel stability, substrate composition, temperature, and migratory corridors used by the species for foraging, cover, migration, and spawning.

Questions regarding whether specific activities may constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Snake River Basin Office (see **ADDRESSES** section). Requests for copies of the regulations concerning listed animals and inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–6241; facsimile 503/231–6243).

Special Rule

Section 4(d) of the Act provides authority for the Service to promulgate special rules for threatened species that would relax the prohibition against taking. In this case, the Service proposes a special rule for the Columbia River bull trout distinct population segment (see Proposed Regulations Promulgation section). The Service recognizes that, based on the 1994 administrative record, statewide angling regulations have become more restrictive in an attempt to protect bull trout throughout Montana, Idaho, Oregon, and Washington. The Service intends to continue to work with the States in developing management plans and agreements with the objective of recovery and eventual delisting of the Columbia River bull trout distinct population segment. The Service is consequently proposing a special rule under section 4(d) that offers additional management flexibility for this population segment. The special rule would allow for take of bull trout within the Columbia River population segment when it is in accordance with applicable State fish and wildlife conservation laws and regulations. The Service believes that a special rule of this nature will benefit the Columbia River distinct population segment of bull trout, and that the rule would satisfy the requirement under section 4(d) that regulation applied to threatened species embody those measures deemed necessary and advisable to provide for the conservation of the population segment in question.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning threat (or lack thereof) to these two population segments;

(2) The location of any additional populations of the two segments and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional and updated information concerning the range, distribution, and population size of the two segments;

(4) Current or planned activities in the subject area and their possible impacts on the two population segments; and

(5) Promulgation of the special rule.

The final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final determination that differs from this proposal. In addition, the Service will consider significant new information on bull trout received since the close of the 1994 administrative record. A list of significant references concerning bull trout that have become available since the close of the 1994 record may be obtained upon request from the Snake River Basin Field Office (see **ADDRESSES** above).

The Endangered Species Act provides for at least one public hearing on this proposal, if requested. However, given the high likelihood of several requests throughout the range of both population segments, the Service has scheduled five hearings in advance of any request. The hearings are scheduled for Portland, Oregon, on July 1, 1997; Spokane, Washington, on July 8, 1997; Missoula, Montana, on July 10, 1997; Klamath Falls, Oregon, on July 15, 1997; and Boise, Idaho, on July 17, 1997. For additional information on public hearings, see the **DATES** section.

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements.

References Cited

A complete list of all references cited herein is available upon request from the Snake River Basin Field Office (see **ADDRESSES** above).

Author: The primary authors of this proposed rule are Don Sundeen and Jim Bartel, Regional Office, Portland, Oregon.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is proposed to be amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under *Fishes,* to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
FISHES							
*	*	*	*	*	*		*
Trout, bull	*Salvelinus confluentus.*	U.S.A. (OR)	Klamath River	E		NA	NA
Do	......do	U.S.A. (ID, MT, OR, WA) Canada.	Columbia River	T		NA	17.44(v)
*	*	*	*	*	*		*

3. Amend § 17.44 by adding paragraph (v) to read as follows:

§ 17.44 Special rule—fishes.

* * * * *

(v) Bull trout (*Salvelinus confluentus*), Columbia River population

(1) No person shall take this species, except in accordance with applicable State fish and wildlife conservation laws and regulations.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of this species is also a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, any means whatsoever, any such

species taken in violation of these regulations or in violation of applicable State fish and game laws and regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (v) (1) through (3) of this section.

Dated: June 9, 1997.

William Leary,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 97–15584 Filed 6–12–97; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 62, No. 114

Friday, June 13, 1997

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

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces that the Farm Service Agency (FSA) intends to request an extension for currently approved collection of information pertaining to FSA administered cost-share programs which have the common goal of conserving the Nation's basic soil and water resources and preserving the local environment. The programs that require forms covered by this request for extension are the Agricultural Conservation Program (ACP) for which the authority to engage in new activities was repealed by Section 336 of the Federal Agriculture Improvement and Reform Act of 1996, the interim Environmental Quality Incentives Program (EQIP) which provided temporary authority to engage in new ACP activities and those of three other programs through September 30, 1996, the Emergency Conservation Program, the Conservation Reserve Program, and the Forestry Incentives Program.

DATES: Comments on this notice must be received on or before August 12, 1997 to be assured consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Cheryl Zavodny, Branch Chief, Conservation Programs Branch, Conservation and Environmental Protection Division, USDA, FSA, STOP 0513, 1400 Independence Avenue, SW, Washington, D.C. 20250–0513, (202) 720–7333.

SUPPLEMENTARY INFORMATION:

Title: Conservation and Environmental Programs OMB Number: 0560–0082

Expiration Date: July 31, 1997

Type of Request: Extension of a currently approved information collection.

Abstract: The FSA, in cooperation with the Natural Resources Conservation Service, the Forest Service, and other agencies and organizations, provides eligible producers and landowners cost-share incentives through a number of conservation and environmental programs to help farmers, ranchers and other eligible landowners and operators conserve soil, improve water quality, maintain the fertility of the land, develop and improve forest areas, provide wildlife habitat, and rehabilitate land damaged by natural disasters. The conservation programs using these forms requires producers to provide information used to determine the producer's eligibility to participate and for payment purposes. Although the ACP was repealed by Section 336 of the Federal Agriculture Improvement and Reform Act of 1996, and the period for the interim EQIP program has ended, there are existing ACP as well as existing interim EQIP long-term agreements in effect which continue to obligate the participants to perform conservation practices and other contract requirements in future years. The CRP (which is CCC funded) has significant activity because of the continuous and recent general CRP signups. A considerable increase is possible in ECP activity due to the many severe natural disasters recently occurring all over the country. The FIP is estimated to have about the same activity as previous years.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average: .25 hours for AD–245; .20 hours for FSA–18, and .5 hours for ACP–311.

Respondents: Farm and ranch owners and operators, farm managers, or attorneys.

Estimated Number of Respondents: 510,000.

Estimated Number of Responses per Respondent: 2 (average).

Estimated Total Annual Burden on Respondents: 205,000 hours.

Proposed topics for comment include: (a) whether the collection of information is necessary for the proper performance of the functions of the agency; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; and (c) ways to minimize the burden of the collection of the information on those who are to respond. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Cheryl Zavodny, Branch Chief, Conservation Programs Branch, Conservation and Environmental Protection Division, USDA, FSA, STOP 0513, 1400 Independence Avenue, SW, Washington, D.C. 20250–0513, (202) 720–7333.

Signed at Washington, D.C., on June 8, 1997.

Bruce R. Weber,

Acting Administrator, Farm Service Agency and Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 97–15581 Filed 6–12–97; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

1997–1998 Marketing Year Penalty Rates for All Kinds of Tobacco Subject to Quotas

AGENCY: Farm Service Agency, USDA.

ACTION: Notice.

SUMMARY: This notice sets forth the determination of the 1997–1998 marketing year penalty rate for excess tobacco for all kinds of tobacco subject to marketing quotas. In accordance with section 314 of the Agricultural Adjustment Act of 1938, as amended, (the 1938 Act) marketing quota penalty for a kind of tobacco is assessed at the rate of 75 percent of the average market price for that kind of tobacco for the immediately preceding marketing year.

EFFECTIVE DATE: June 13, 1997.

ADDRESSES: Farm Service Agency (FSA), Tobacco and Peanuts Division, STOP 0514, 1400 Independence Avenue, SW, Washington, DC 20250–0514.

FOR FURTHER INFORMATION CONTACT: Misty L. Jones, Tobacco and Peanuts Division, telephone (202) 720–0200.

Discussion

Section 314 of the 1938 Act, provides that the rate of penalty per pound for a kind of tobacco that is subject to marketing quotas shall be 75 percent of the average market price for such tobacco for the immediately preceding marketing year.

The Agricultural Statistics Board, National Agricultural Statistical Service (NASS), USDA, determines and announces annually the average market prices for each type of tobacco.

The penalty rates for the 1997–1998 marketing year have been determined based on the average market prices as published, by NASS in its May 12, 1997, Crop Production report.

Since the determination of the 1997–1998 marketing year rates of penalty reflect only mathematical computations which are required to be made in accordance with a statutory formula, it has been determined that no further public rulemaking is required.

Determination

Accordingly, it is determined that the 1997–1998 marketing year rates of penalty for kinds of tobacco subject to marketing quotas are as follows:

RATE OF PENALTY
[1997–1998 Marketing Year]

Kinds of tobacco	Cents per pound
Flue-Cured	138
Burley	144
Fire-Cured (Type 21)	134
Fire-Cured (Types 22 and 23)	168
Dark Air-Cured (Types 35 and 36)	153
Virginia Sun-Cured (Type 37)	134
Cigar Filler and Binder (Types 42–44, 54 and 55)	111

Signed at Washington, DC, on June 8, 1997.

Bruce R. Weber,

Acting Administrator, Farm Service Agency.

[FR Doc. 97–15582 Filed 6–12–97; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Bridger Bowl Ski Area Permit Renewal and Master Plan Update Gallatin National Forest, Gallatin County, Montana

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) to disclose the environmental effects of work planned to be accomplished over the next 10–15 years at Bridger Bowl ski area which includes expansion of the existing facilities to improve beginner skier terrain; increase skier opportunities on the mountain; improve parking facilities and increase snow making capacity. The proposal would expand the ski area boundary to the north into the Bradley Meadow and Northwest Passage areas and expand the ski area boundary to the south into the Pine-Slushman area. Several new runs would be developed as well as two surface lifts to the ridge and two new chair lifts. Existing chair lifts would be reconfigured and/or replaced. The base area would be expanded and sewage facilities upgraded.

Implementation of the proposal would require a Forest Plan amendment to change the land management allocation for the area adjacent to the existing ski area from a semi-primitive recreation and wildlife habitat emphasis to a developed winter recreation (ski area) emphasis.

DATES: Written comments and suggestions should be received on or before July 28, 1997.

ADDRESSES: Submit written comments and suggestions on the proposed management activities or a request to be placed on the project mailing list to Gene Gibson, District Ranger, Bozeman Ranger District, Gallatin National Forest, 3710 Fallon St, Suite C, Bozeman, Montana, 59718–1911.

FOR FURTHER INFORMATION CONTACT: Nancy Halstrom, EIS Team Leader, Bozeman Ranger District, Gallatin National Forest, Phone (406) 587–6920.

SUPPLEMENTARY INFORMATION: Bridger Bowl ski area is located in Bridger Canyon about 16 miles northeast of Bozeman, Montana. The area is operated by the Bridger Bowl Corporation, a non-profit Montana corporation. Bridger Bowl owns about 326 acres of the lower mountain; is in the process of procuring 120 acres of land it has leased from the State of Montana; and is authorized through a special use permit to use about 1,153 acres of national forest land for recreational skiing purposes.

Skiing began in the early 1940's by local enthusiasts from the Bozeman area. In 1950, the State of Montana acquired 120 acres of private land to be used in conjunction with the ski area. By 1952, the local residents had organized and constructed the first commercial rope tow and base lodge with volunteer help and private donations. The non-profit corporation was organized in 1954 to maintain and operate the ski area. It was originally known as the Bozeman State Park Recreation Association. The Forest Service issued the first special use permit for the ski area in 1954. The ski area has grown to sevel lifts and about 600 acres of developed ski trails.

Bridger Bowl Inc. has submitted a Master Plan proposal to the Gallatin National Forest which covers their plans for continuation of their special use authorization to operate on national forest lands. The Master Plan includes a series of work divided into three phases to be accomplished over the next 10–15 years.

The Forest Service will consider a range of alternatives. One of these will be the ''no action'' alternative, in which none of the proposed activities would be implemented. Additional alternatives will examine varying levels and locations for the proposed activities to achieve the proposal's purposes, as well as to respond to the issues and other resources values.

The EIS will analyze the direct, indirect, and cumulative environmental effects of the alternatives. Past, present, and projected activities on both private and National Forest lands will be considered. The EIS will disclose the analysis of site-specific mitigation measures and their effectiveness.

Public participation is an important part of the analysis, commencing with the initial scoping process (40 CFR 1501.7), which will occur June 1997 to July 1997. 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 and other individuals or organizations who may be interested in or affected by the proposed action. The proposed will be presented at two Open Houses at the Bozeman Ranger Distrct Office on Monday, June 23. The representatives will be at 3:00 pm and at 7:00 pm. Representatives from Bridger Bowl Inc. and the Gallatin National Forest will be available at the open house to discuss the proposed project and provide additional information.

Comments from the public and other agencies will be used to preparation of the Draft EIS. The scoping process will be used to:

1. Identify potential issues.
2. Identify major issues to be analyzed in depth.

3. Eliminate minor issues or those which have been covered by a relevant previous environmental analysis, such as the Gallatin Forest Plan EIS.

4. Identify alternatives to the proposed action.

5. Identify potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects).

6. Determine potential cooperating agencies and task assignments.

The following preliminary issues have been identified so far:

- Potential effects to changes in sediment yield and channel stability associated with the proposed new construction.
- Potential impacts to Yellowstone Cutthroat trout habitat in the South Fork of Brackett Creek due to potential changes in sediment delivery.
- Potential impacts to the primitive characteristics of the inventoried Bridger roadless area which surrounds the current ski area to the south, north, and west. The proposal includes the development of ski lifts and ski trails adjacent to and within this area.
- The proposal includes additional ski runs and lifts in the Pine-Slushman area to the south of the current ski area and additional ski runs and lifts to the north. This proposal has the potential to change the existing visual condition as observed from various locations in the Bridger canyon.
- The proposal includes expanded season of use. The use pattern of the national forest road and trails within the permitted area may be affected.
- Potential effects to the adjacent cross-country ski trail system authorized on national forest land.
- Effects to the traffic patterns and potential increase on the highway to the ski area and it's compliance to current county land use planning.

Other issues commonly associated with ski area development include: effects on cultural resources, water quality, soils, sensitive species, and scenery values. This list may be verified, expanded, or modified based on public scoping for this proposal.

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in November of 1997. At that time, the EPA will publish a notice of availability of the Draft EIS in the **Federal Register.** The comment period on the Draft EIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register.** It is very important that those interested in management of the Bridger Bowl ski area participate at that time. To be most helpful, comments on the Draft EIS should be as site-specific as possible. The Final EIS is scheduled to be completed by June, 1998.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of 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 environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day scoping comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in developing issues and alternatives.

To assist the Forest Service in identifying and considering issues on the proposed action, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

I am the responsible official for this environmental impact statement. My address is Gallatin National Forest, P.O. Box 130, Federal Building, Bozeman, MT 59771.

Dated: June 6, 1997.

Richard H. Inman,

Acting Forest Supervisor.

[FR Doc. 97–15484 Filed 6–12–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Intergovernmental Advisory Committee Subcommittee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Intergovernmental Advisory Committee will meet on June 19, 1997, at the State Capitol Building, Salem, Oregon. The purpose of the meeting is to continue discussions on the implementation of the Northwest Forest Plan. The meeting will begin at 8:00 a.m. and continue until 3:00 p.m. Agenda items to be discussed include, but are not limited to: effectiveness monitoring and a series of informational presentations on the Oregon Coastal Salmon Restoration Initiative. The IAC meeting will be open to the public and is fully accessible for people with disabilities. Interpreters are available upon request in advance. Written comments may be submitted for the record at the meeting. Time will also be scheduled for oral public comments. Interested persons are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Questions regarding this meeting may be directed to Don Knowles, Executive Director, Regional Ecosystem Office, 333 SW 1st Avenue, P.O. 3623, Portland, OR 97208 (Phone 503–326–6265).

Dated: June 3, 1997.

Donald R. Knowles,

Designated Federal Official.

[FR Doc. 97–15573 Filed 6–12–97; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletion from procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a commodity previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 14, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodities and service proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and service have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Office and Miscellaneous Supplies
(Requirements for the Naval Air Station, Lemoore, California)
NPA: The Lighthouse of Houston, Houston, Texas.
Fiberboard MM Tray and Sleeve
P.S. Item 3916
P.S. Item 3916A
NPA: National Center for Employment of the Disabled, El Paso, Texas
Tape, Electronic Data Processing
7045–01–086–2044
NPA: North Central Sight Services, Inc., Williamsport, Pennsylvania

Mophead, Looped-end
7920–01–437–8636
7920–01–437–9805
7920–01–437–9806
7920–01–437–9810
7920–01–437–9811
NPA: Mississippi Industries for the Blind, Jackson, Mississippi

Service

Administrative/General Support Services
GSA, Public Building Service
Various Field Offices
Richmond/Charlottesville, Virginia,
NPA: Goodwill Services, Inc., Richmond, Virginia
Deletion:

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action does not appear to have a severe economic impact on future contractors for the commodity.

3. The action will result in authorizing small entities to furnish the commodity to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for deletion from the Procurement List.

The following commodity has been proposed for deletion from the Procurement List:

Tape, Pressure-Sensitive
7510–00–680–2470

Beverly L. Milkman,
Executive Director.

[FR Doc. 97–15578 Filed 6–12–97; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Deletions from the procurement list.

SUMMARY: This action deletes from the Procurement List commodities and services previously furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: July 14, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On May 31, June 14, July 19, August 16, September 6, October 18, November 8, 1996 and January 24, 1997, the Committee for Purchase from People who are Blind or Severely Disabled published notices (61 F.R. 27339, 30224, 37719, 42584, 47113, 54417, 57849 and 62 F.R. 3658) of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. Accordingly, the following commodities and services are hereby deleted from the Procurement List:

Commodities

Seat Assembly, Complete
P.S. #054–A

Seat Cover
P.S. #054–B

Pad, Shoulder Strap
P.S. #D–1212

Harness, Carrying
1660–00–571–2239

Kit, Deep Water Fording
2540–00–181–8109
2540–00–780–0844

Mirror and Bracket Assembly
2540–00–575–8392

Truck, Hand
3920–00–847–1305

Pouch, Mechanic's Tool
5140–00–329–4306

Chest, Lighting Equipment
6210–00–382–9173

Bandage, Gauze
6510–00–582–7992
6510–00–582–7993

Splint, Wood
6515–00–372–1200

Bag, Urine Collection
6530–01–074–6600

Spineboard
6530–01–119–0011
6530–01–119–0012

Apron, Protective
6532–00–935–9765

Shirt, Operating, Surgical
6532–00–299–9632
6532–00–299–9633
6532–00–299–9634

Binder, Looseleaf, Pressboard
7510–00–582–3807
7510–00–281–4315
7510–00–281–4311

Binder, Looseleaf, Printout
7510–00–965–2443
Envelope, Transparent
7510–00–782–6276
Eraser, Blackboard
7510–00–244–9145
Portfolio
7510–00–579–8554
Refill, Ballpoint Pen
7510–00–754–2687
7510–00–543–6795
7510–00–754–2690
Tape, Pressure-Sensitive Adhesive
7510–00–074–4946
Pencil, Mechanical
7520–00–223–6673
7520–00–268–9915
7520–01–354–2304
Card, Guide, File
7530–00–988–6541
7530–00–988–6542
7530–00–988–6549
7530–00–988–6550
7530–00–988–6545
7530–00–988–6546
7530–00–988–6547
7530–00–988–6548
7530–00–989–2425
Card Set, Guide, File
7530–00–989–0694
7530–00–989–0693
7530–00–989–0695
7530–00–989–0686
7530–00–861–1275
Envelope, Wallet
7530–00–281–5976
Folder, File
7530–00–926–8975
7530–00–926–8977
7530–00–456–6140
7530–00–531–7809
7530–00–285–5879
Folder, File, Pressboard
7530–00–739–7723
Folder-Set, File, Pressboard
7530–00–286–7080
7530–00–286–7244
7530–00–286–7253
Paper, Looseleaf, Ruled
7530–00–286–4333
7530–00–198–6265
7530–00–286–4334
7530–00–286–4335
7530–00–286–4331
Paper, Looseleaf, Blank
7530–00–286–5777
7530–00–286–5778
7530–00–286–5779
7530–00–286–5780
7530–00–286–5781
Tape, Paper, Computing Machine
7530–00–286–9055
7530–00–286–9052
7530–00–286–9053
7530–00–222–3456
DOE This Month Newsletter
7690–00-NSH–0033
VA Medical Center Newsletter
7690–00-NSH–0042
Yard News
7690–00-NSH–0046
Brush, Sanitary
7920–00–234–9317
Bag, Cloth
8105–00–282–8183
Box, Shipping
8115–00–117–9524
8115–00–183–9496
8115–00–183–9499
8115–00–183–9500
8115–00–183–9504
8115–00–183–9505
8115–00–190–4863
8115–00–190–4888
8115–00–190–4921
8115–00–190–4936
8115–00–190–4968
8115–00–200–6954
8115–00–200–6961
8115–00–255–1346
8115–00–281–3877
8115–00–281–3882
8115–00–281–3886
8115–00–281–3889
8115–00–285–1116
8115–00–292–0724
8115–00–418–4660
8115–00–514–2404
8115–00–526–1617
8115–00–579–9153
8115–00–190–4864
8115–00–190–4865
8115–00–190–5053
8115–00–418–4657
8115–00–190–5011
8115–00–418–4654
8115–00–985–7312
8115–00–292–0120
8115–00–428–4145
8115–00–117–9529
8115–00–165–6599
Case, Flag, Internment
8345–00–782–3010
Hood, Extreme Cold Weather
8415–00–472–4695
Liner, Coat, Cold Weather
8415–01–062–0679
8415–00–782–2889
8415–00–782–2888
8415–00–782–2887
8415–00–782–2886
8415–00–782–2890
Liner, Trousers, Cold Weather
8415–01–180–0370
8415–01–180–0371
8415–01–180–0372
8415–01–180–0373
8415–01–180–0374
8415–01–180–0375
Trunks, General Purpose
8415–01–311–0379
8415–01–311–0380
8415–01–311–0381
8415–01–311–0382
8415–01–311–0383
8415–01–311–0384
Gloves, Men's
8440–00–160–0874
8440–00–160–0770
8440–00–160–0875
Bag, Soiled Clothes
8465–00–122–0364
8465–00–122–0362
8465–00–122–0363
Strap, Webbing, Waist, LC–1
8465–00–269–0481
Cleaner, Tobacco Pipe
9920–00–292–9946

Services

Commissary Shelf Stocking and Custodial, Seneca Army Depot, Seneca, New York
Elevator Operator, Wyoming Valley Veterans Building, 19 North Main Street, Wilkes-Barre, Pennsylvania
Food Service Attendant for the following locations: Missouri Air National Guard, 10800 Lambert International Boulevard, Bridgeton, Missouri
Jefferson Barracks and Base, Building 280, #1 Grant Road, St. Louis, Missouri
Food Service Attendant, Naval Station, Staten Island Galley, New York, New York
Grounds Maintenance, North and South Duplexes, Naval Weapons Center, China Lake, California
Janitorial/Custodial, Armed Forces Reserve Center, Los Alamitos, California
Janitorial/Custodial, Domiciliary Buildings, VA Medical Center, Dublin, Georgia
Janitorial/Custodial, Air National Guard Base, Otis, Massachusetts
Janitorial/Custodial, Buildings 928 and 1002, Kirtland Air Force Base, New Mexico
Janitorial/Custodial, U.S. Army Reserve Center, Downingtown, Pennsylvania
Janitorial/Custodial, U.S. Army Reserve Center, Folsom, Pennsylvania
Janitorial/Custodial, U.S. Army Reserve Center, 1522–24 E. Wingohocking Street, Philadelphia, Pennsylvania
Janitorial/Custodial, U.S. Army Reserve Center 950 Saw Mill Boulevard, Pittsburgh, Pennsylvania
Janitorial/Custodial, Department of the Army, Jimmy Doolittle Building, Columbia Metro Airport, West Columbia, South Carolina
Janitorial/Custodial, U.S. Army Reserve Center, 6300 West 7th Street, Texarkana, Texas
Janitorial/Custodial, Federal Center 25th and Dover Streets, Moses Lake, Washington

Mailroom Operation, U.S. Army Research Laboratory, 405 Arsenal Street, Watertown, Massachusetts

Parts Sorting, Red River Army Depot, Texarkana, Texas

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–15579 Filed 6–12–97; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Proposed Additions to the Procurement List; Correction

In the document appearing on page 31065, FR Doc. 97–14802, in the issue of June 6, 1997, in the first column, the listing for ''Food Service Attendant, Fort Bliss, Texas'' should read ''Food Service and Food Service Attendant, Fort Bliss, Texas''.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–15577 Filed 6–12–97; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 888]

Grant of Authority; Establishment of a Foreign-Trade Zone, Montgomery, Alabama

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Montgomery Area Chamber of Commerce, Inc. (the Grantee) (an Alabama non-profit organization), has made application to the Board (FTZ Docket 34–96, 61 FR 20214, 5/6/96), requesting the establishment of a foreign-trade zone at sites in Montgomery, Alabama, adjacent to the Birmingham Customs port of entry; and

Whereas, notice inviting public comment has been given in the **Federal Register**, and the Board adopts the findings and recommendations of the examiner's report and finds that the requirements of the Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 222, at the sites described in the application, subject to the Act and the Board's regulations, including § 400.28, subject to the standard 2,000-acres activation limit.

Signed at Washington, DC, this 30th day of May 1997.

Foreign-Trade Zones Board.

William M. Daley,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–15609 Filed 6–12–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 893]

Grant of Authority; for Subzone Status; Puerto Rico Sun Oil Company (Oil Refinery) Yabucoa, Puerto Rico

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Commerical and Farm Credit and Development Corporation, grantee of Foreign-Trade Zone 61, for authority to establish special-purpose subzone status at the oil refinery complex of Puerto Rico Sun Oil Company, located in Yabucoa, Puerto Rico, was filed by the Board on July 19, 1996, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 60–96, 61 FR 39628, 7–30–96); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 61I) at the oil refinery complex of Puerto Rico Sun Oil Company, located in Yabucoa, Puerto Rico, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR §§ 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR § 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR § 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.1000—#2710.00.1050 and #2710.00.2500 which are used in the production of:

—Petrochemical feedstocks and refinery by-products (examiners report, Appendix C);

—Products for export; and,

—Products eligible for entry under HTSUS #9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 2nd day of June 1997.

Robert S. LaRussa,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 97–15612 Filed 6–12–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 891]

Grant of Authority for Subzone Status; Tosco Corporation; (Oil Refinery) Delaware County, Pennsylvania

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Philadelphia Regional Port Authority, grantee of Foreign-Trade Zone 35, for authority to establish special-purpose subzone status at the oil refinery complex of Tosco Corporation, located in Delaware County, Pennsylvania, was filed by the Board on September 29, 1995, and amended on January 28, 1997, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 58–95, 60 FR 53164, 10–12–95 and 62 FR 7751, 2–20–97); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 35D) at the oil refinery complex of Tosco Corporation, located in Delaware County, Pennsylvania, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.1000—#2710.00.1050 and #2710.00.2500 which are used in the production of:

—Petrochemical feedstocks and refinery by-products (examiners report, Appendix C);
—Products for export; and,
—Products eligible for entry under HTSUS #9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 2d day of June 1997.

Robert S. LaRussa,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–15610 Filed 6–12–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 892]

Grant of Authority for Subzone Status; Texaco Inc.; (Oil Refinery) Skagit County, Washington

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Port of Tacoma, grantee of Foreign-Trade Zone 86, for authority to establish special-purpose subzone status at the oil refinery complex of Texaco Inc., located in Skagit County, Washington, was filed by the Board on July 17, 1996, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 58–96, 61 FR 39119, 7–26–96); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 86C) at the oil refinery complex of Texaco Inc., located in Skagit County, Washington, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.1000—#2710.00.1050, #2710.00.2500 and #2710.00.4510 which are used in the production of:

—Petrochemical feedstocks and refinery by-products (examiners report, Appendix C);

—Products for export; and,

—Products eligible for entry under HTSUS #9808.00.30 and #9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 2d day of June 1997.

Robert S. LaRussa,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–15611 Filed 6–12–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Romania; 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 November 29, 1996, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs), from Romania. The period of review (POR) is May 1, 1993 through April 30, 1994. This review covers one class or kind of merchandise, ball bearings (BBs), and one respondent, Tehnoimportexport S.A. (TIE).

Based on our analysis of comments received, we have made changes to the margin calculations. The final weighted-average dumping margin is in the section titled *Final Results of Review* below.

EFFECTIVE DATE: July 13, 1997.

FOR FURTHER INFORMATION CONTACT: Charles Riggle or Thomas O. Barlow, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone: (202) 482–4733.

Applicable Statute and Regulations: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended, (the Act) and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

SUPPLEMENTARY INFORMATION:

Background

On November 29, 1996, we published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on BBs and parts thereof from Romania. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Romania; Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 60679. We gave interested parties an opportunity to comment on our preliminary results. Only TIE submitted comments.

We have conducted this administrative review in accordance with section 751(a)(1) of the Act and 19 CFR 353.22.

Scope of this Review

Imports covered by this review are shipments of BBs from Romania. This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.10, 8482.99.35, 8482.99.6590, 8482.99.70, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.70.8050, 8708.93.30, 8708.93.5000, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4960, 8708.99.50, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, 8803.90.90.

The size or precision grade of a bearing does not influence whether the bearing is covered by the order. For a further discussion on the scope of the order being reviewed, including recent scope decisions, *see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.; Final Results of Antidumping Duty Administrative Reviews, and Revocation in Part of Antidumping Duty Orders,* 60 FR 10900 (February 28, 1995). The HTS item numbers are provided for convenience and Customs purposes. The written description of the scope of this order remains dispositive.

Analysis of Comments Received

Comment 1: TIE argues that it is entitled to a separate rate, and that, in refusing to provide a separate rate for TIE, the Department overlooked significant changes that occurred both in Romania and at TIE over the past several years. TIE points out that in 1993, pursuant to Romanian law, it was a joint stock company with 70 percent of the stock held by the State Ownership Fund (SOF) and 30 percent held by the Private Ownership Fund (POF). TIE claims that there is no evidence that the government had any theoretical control over TIE's daily activities. Even if the shareholders, *i.e.*, the SOF and the POF had some rights with respect to the selection of the Council of Administration, which had the right to select certain management personnel, TIE states that this should not negate a finding that there was no government control with respect to TIE's exports. TIE argues that shareholders of government-owned companies in any country have certain rights, including the right to select certain company officials.

TIE states that exporters in non-market economy (NME) countries are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to exports, and it further claims that separate rate determinations are rendered on a case-by-case basis, citing *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* (*Sparklers*), 56 FR 20588 (May 6, 1991), and *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China* (*Silicon Carbide*), 59 FR 22585 (May 2, 1994). TIE argues that the Department failed to supply any causal connection between government selection of management and actual control of export prices, and TIE claims that there is no record evidence to support the Department's assumption of such a connection.

TIE also argues that, in response to the Polish government's request that the Department revoke Poland's status as a NME country, the Department did not determine that ''government ownership'' of state-owned enterprises, or the selection of management by the owner, precludes a commercial entity's independence, referring to Department Memorandum, Respondent's Request for Revocation of Poland's NME Status (June 21, 1993) at 18–19.

Finally, TIE argues, the Department has determined, in other cases involving Romania, that former state-owned Romanian trading companies which have undergone partial privatization were entitled to separate rates, citing, *e.g., Circular Welded Non-Alloy Steel Pipe from Romania: Final Determination of Sales at Less Than Fair Value,* 61 FR 24274, 24283 (May 14, 1996) (*Steel Pipe*). While TIE acknowledges that it was not privatized during the POR, TIE claims that its management, and not the government, controlled all aspects of the export process. Accordingly, TIE asserts, the Department should provide TIE with a separate rate for the final results.

Department's Position: We disagree with TIE. To determine whether a company is sufficiently independent of government control to be entitled to a separate rate we analyze the exporting entity under the test established in *Sparklers,* as amplified by *Silicon Carbide.* We test the absence of both *de jure* and *de facto* government control with respect to the following criteria: (1) the respondent's export prices are not set by, nor subject to the approval of, a government authority; (2) the respondent has the authority to negotiate and sign contracts and other agreements; (3) the respondent has autonomy from the government regarding the selection of management; and (4) the respondent retains the proceeds from its export sales and makes indepenent decisions regarding the disposition of profits.

In applying this test to TIE we determined that, from a *de facto* perspective, TIE did not have autonomy in making decisions regarding the selection of management. *See Memorandum For Director, Office of Antidumping Compliance, From Director, Division II, Office of Antidumping Compliance: Assignment of a Separate Rate for Tehnoimportexport S.A., in the 1993–94 Administrative Review of the Antidumping Duty Order on Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Romania,* January 31, 1996. During the POR, the Council of Administration, composed mostly of members of the government, was responsible for the hiring and firing of key personnel, including TIE's general director. The Council of Administration also selected the Executive Committee, which controlled day-to-day activities of TIE, indicating a significant degree of *de facto* government control. The fact that TIE did not have autonomy in the selection of management also suggested that TIE's export prices were subject to the approval of a government entity, and that TIE's authority to negotiate and sign contracts was similarly not free from government direction.

We find TIE's citation to our decision regarding the Polish government's request that the Department revoke Poland's status as an NME country, to be inapposite. Our test for determining NME status is different from our separate-rates test. Additionally, as TIE acknowledges, separate-rates analyses are rendered on a case-by-case basis. Accordingly, we have made our determination as to TIE's eligibility for a separate rate based on the characteristics unique to TIE's situation.

We also note certain differences between this case and *Steel Pipe.* Whereas in Steel Pipe we verified that respondents' Councils of Administration were sufficiently independent of the government (*Steel Pipe* at 24276), TIE's Council of Administration was, as explained above, composed mostly of members of the government during the POR. Accordingly, we have, for these final results, maintained our preliminary determination that TIE is not entitled to a separate rate.

Comment 2: TIE argues that the Department's labor rate calculation, based on the labor rate in Poland, was erroneous in three respects. First, TIE challenges the monthly hours worked used to calculate surrogate wage rates in Poland, obtained from the International Labor Office (ILO) Yearbook of Labor Statistics. TIE claims that the monthly hours figure is illogical, and assumes Polish workers are working only 31.65 hours per week. Further, TIE claims that the Department's use of the ILO data conflicts with more recent information used by the Department, citing *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the Republic of Romania; Final Results of Antidumping Duty Administrative Review,* 61 FR 51427, 51430 (October 2, 1996) (*TRBs from Romania*). Likewise, TIE notes that the Department used the same data in *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished from Romania; Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 63826, 63927 (December 2, 1996). TIE asserts that, assuming that wage statistics from the Polish Statistical Bulletin are used for the final results, the data should be amended to reflect a 42-hour work week consistent with the cited cases.

Second, TIE argues that the Polish labor rates improperly included bonus payments. TIE claims that the Department typically uses a simple hourly wage as a surrogate value, and that use of a wage that includes bonus payments unfairly assumes profits were made by the Polish companies. Accordingly, TIE argues that the Department should modify the Polish labor data to exclude bonus payments from profit.

Finally, TIE argues that Polish labor rates are not representative of labor rates in Romania, or in other potential surrogate countries. TIE claims that the labor rate used by the Department in the preliminary results, $1.46 per hour, exceeds the rate in Romania, presumably because, based on 1992 statistical data used by the Department, Poland's *per capita* GNP was roughly double that of Romania. TIE argues that it is unfair to use the labor rate from a country with such a disparate edge in *per capita* income without adjusting such labor rates to account for the income disparity. TIE points out that record evidence indicates that the labor rate for Ecuador, a potential surrogate country whose *per capita* GNP was almost identical to that of Romania, was $0.73 per hour.

TIE states that the Department's proposed regulations direct the Department to use an average of the wage rates in market economy countries considered to be economically comparable to the NME country. TIE suggests that the Department adopt that policy for purposes of the final results and use an average of the Polish rate (as modified by TIE's other arguments explained above) and the Ecuadoran rate.

Department's Position: We agree with TIE in part. The ILO data we used in the preliminary results represented actual hours worked as opposed to paid hours, including, *e.g.,* paid holidays and paid vacations. The wage statistics from the Polish Statistical Bulletin are based on total paid hours. Therefore, consistent with *TRBs from Romania,* for these final results we have recalculated the wage rate using a 42-hour work week based on information from *Investing, Licensing and Trading Conditions Abroad, Poland,* published by the Economist Intelligence Unit.

We disagree with TIE's second argument. Wage rates should be, as accurately as possible, a reflection of the actual costs to employers. Bonus payments represent a portion of the fabrication cost to the employer and are properly a part of our calculation.

Finally, we disagree with TIE's suggestion that, in accordance with our proposed regulations, we use an average of the Polish wage rate and the Ecuadoran wage rate. Although our proposed regulations suggest the use of an alternative method for valuing labor, (61 FR 7308, 7345 (February 27, 1996)), our current practice remains unchanged and we continue is to use wage data from a single surrogate country. Furthermore, of the two countries suggested by TIE with which to calculate an average wage rate, only Poland has a comparable industry. As such, Poland is the proper source for the surrogate wage rate.

Comment 3: TIE argues that the Department should use the statutory minimum of 8 percent to calculate profit for foreign market value (FMV) purposes.

Department's Position: We disagree with TIE. If the profit in the surrogate is higher than 8 percent, as here, we use the actual profit in the surrogate for our FMV calculation. We use the statutory minimum for profit only in cases for which the surrogate profit is below 8 percent.

Final Results of the Review

As a result of our analysis of the comments we received, we determine the following weighted-average margin exists for the period May 1, 1993 through April 30, 1994:

Manufacturer/exporter	Margin (percent)
Romania Rate	0.00

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following cash deposit requirements will be effective upon publication of these final results for all shipments of BBs and parts thereof from Romania 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 rate for TIE and for all other Romanian exporters will be zero percent; and (2) for non-Romanian exporters of BBs and parts thereof from Romania, the cash deposit rate will be the rate applicable to the Romanian supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a reminder to importers of their responsibility under 19 CFR 353.26 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 disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). 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 the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: May 27, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–15605 Filed 6–12–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–804]

Cold-Rolled Carbon Steel Flat Products From the Netherlands; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of Antidumping Duty Administrative Review.

SUMMARY: On April 15, 1997, the Department of Commerce (the Department) published the final results of its administrative review of the antidumping duty order on cold-rolled carbon steel flat products from the Netherlands (62 FR 18476). The period of review is August 1, 1994 through July 31, 1995. On April 21, 1997, the sole respondent, Hoogovens Staal BV, and its U.S. subsidiary, Hoogovens Steel USA, Inc. (collectively, Hoogovens) filed a timely request that the Department correct two ministerial errors in these final results. On May 1, 1997, the petitioners (Bethlehem Steel Corporation, U.S. Steel Company (a Unit of USX Corporation), Inland Steel Industries, Inc., Geneva Steel, Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, and Lukens Steel Company) also filed a timely request for the correction of certain ministerial errors in the programming language. We are publishing this amendment to the final results of review in accordance with 19 CFR 353.28(c).

EFFECTIVE DATE: June 13, 1997.

FOR FURTHER INFORMATION CONTACT: Helen Kramer or Linda Ludwig, AD/CVD Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0405 or (202) 482–3833, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise stated, all citations to the Tariff Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Scope of the Review

The products covered by this review include cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized tariff Schedule (HTS) under item numbers 7209.15.000, 7209.16.1030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7215.50.0015, 7215.50.0060, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. Included in this review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "working after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from this review is certain shadow mask steel, *i.e.*, aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The POR is August 1, 1994, through July 31, 1995. This review covers entries of certain cold-rolled carbon steel flat products from the Netherlands by Hoogovens.

Ministerial Errors in Final Results of Review

After reviewing Hoogovens' allegation of two ministerial errors in the Department's computer program for the final results of review for cold-rolled carbon steel flat products from the Netherlands, we agree that an ''else'' statement should be inserted in the computer programming after each line of adjustments to the reported further manufacturing costs for certain invoices. This point was also made by petitioners. Further, we agree with Hoogovens that we should not have included costs of repacking merchandise further manufactured in the United States in the calculation of foreign market value, since we included these costs in further manufacturing costs, which are deducted from U.S. price in the margin calculation.

We also agree with petitioners that in adjusting Hoogovens' reported further manufacturing costs, we inadvertently omitted port-to-plant movement expenses for the specific invoices referenced in the program. We further agree with petitioners that in calculating the net price for CEP transactions, we should have deducted total movement expenses instead of inland freight expenses only. For these amended final results we have made all of the above corrections.

Amended Final Results of Review

As a result of our correction of ministerial errors, we have determined the margin to be:

Manufacturer/exporter	Period of review	Margin (percent)
Hoogovens Staal B.V ...	8/1/94–7/31/95	4.94

The Customs Service shall assess antidumping duties on all appropriate entries. Individual differences between U.S. price and normal value may vary from the percentage stated above. The Department will issue appraisement instructions concerning the respondent directly to the U.S. Customs Service.

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 amended final results of administrative review, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for Hoogovens will be the rate indicated above; (2) if the exporter is not a firm covered in this review, a prior review, or in 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 (3) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 19.32 percent, the ''all-other'' rate established in the amended final determination in the LTFV investment. See Amended Final Determination Pursuant to CIT Decision: Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands, 61 F.R. 47871.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as the final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbersement 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 order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification or conversion to judicial protective order is hereby requested. Failure to comply with the regulation and the terms of the APO is a sanctionable violation.

These amended final results of administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.28(c).

Dated: June 4, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–15608 Filed 6–12–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–429–601]

Notice of Extension of Time Limit for Antidumping Duty Administrative Review of Solid Urea From the Former German Democratic Republic

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: June 13, 1997.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the antidumping duty administrative review of the antidumping order on Solid Urea from the Former German Democratic Republic, pursuant to the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (hereinafter, ''the Act'').

FOR FURTHER INFORMATION CONTACT: Steven Presing, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–0194.

SUPPLEMENTARY INFORMATION: Under § 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. In the instant case, the Department has determined that it is not practicable to complete this review within the statutory time limit. *See* Memorandum from Joseph A. Spetrini to Robert S. LaRussa (May 30, 1997).

Because it is not practicable to complete this review within the time limits mandated by the Act, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limits as follows:

Product	Country	Review period	Initiation date	Prelim due date	Final due date/*/
Solid Urea (A–429–601)	Germany	95/96	08/15/96	07/02/97	10/30/97

*The Department shall issue the final determination 120 days after the publication of the preliminary determination. This final due date is estimated based on publication of the preliminary notice five business days after signature.

Dated: June 2, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 97–15604 Filed 6–12–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–038. *Applicant:* Florida State University, NHMFL, 1800 E. Dirac Drive, Tallahassee, FL 32310. *Instrument:* EPR W-Band System, Model ELEXSYS. *Manufacturer:* Bruker Instruments, Germany. *Intended Use:* The article is intended to be used for studies of the electron paramagnetic resonance spectra related to the environment of unpaired electrons in biological samples (proteins, fat, nucleic acid or whole cells). In addition, the instrument will be used for training graduate students for research in the courses BSC (biological science) 5392 ''Graduate Tutorial'' and BSC 5905 ''Dissertation Research.'' Application accepted by Commissioner of Customs: May 13, 1997.

Docket Number: 97–040. *Applicant:* University of Wisconsin, 750 University Avenue, A. W. Peterson Building, Madison, WI 53706. *Instrument:* Ti:Sapphire Laser, Model MBR–110. *Manufacturer:* Microlase Optical Systems, United Kingdom. *Intended Use:* The article is intended to be used for studies of electron gas-phase atoms and gas-phase molecules with emphasis on rare gas atoms and alkali atoms. Experiments will be conducted to obtain electron impact cross sections with the goals of studying the efficiency of energy transfer in the various inelastic processes and understanding the relevant electron-atom and electron-molecule interactions. *Application accepted by Commissioner of Customs:* May 20, 1997.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–15603 Filed 6–12–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Stevens Institute of Technology, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 96–103R. *Applicant:* Stevens Institute of Technology, Hoboken, NJ 07030. *Instrument:* Stopped-Flow/Scanning Spectrometer, Model SX.18MV. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Intended Use:* See notice at 62 FR 17783, April 11, 1997. *Reasons:* The foreign instrument provides a photodiode array detector to separate a single pulse of white light into discrete wavelengths of 300 to 700 nm for study of rapid kinetic chemical reactions. Advice received from: National Institutes of Health, May 19, 1997.

Docket Number: 97–019. *Applicant:* The Johns Hopkins University, Baltimore, MD 21218. *Instrument:* Fiber-Electrode Micromanipulator. *Manufacturer:* Thomas Recording Sci. Res., Germany. *Intended Use:* See notice at 62 FR 13600, March 21, 1997. *Reasons:* The foreign instrument provides delivery and placement of up to 7 microelectrodes of diameters to 25 μm with state-of-the-art electrical signal processing across the 7 channels for study of neuronal brain functioning. *Advice received from:* National Institutes of Health, May 19, 1997.

Docket Number: 97–024. *Applicant:* Stanford University/University of California, Berkeley, Stanford, CA 94305. *Instrument:* Electron Energy Analyzer, Model Scienta 200. *Manufacturer:* Scienta Instrument AB, Sweden. *Intended Use:* See notice at 62 FR 17783, April 11, 1997. *Reasons:* The foreign instrument provides highest energy resolution of 5.0 meV with resolving power to 1500. *Advice received from:* National Institute of Standards and Technology and Brookhaven National Laboratory, May 27, 1997.

Docket Number: 97–025. *Applicant:* Massachusetts Institute of Technology, Cambridge, MA 02139. *Instrument:* Fish Tank System. *Manufacturer:* Klaus-Jurgen Schwarz, Germany. *Intended Use:* See notice at 62 FR 17783, April 11, 1997. *Reasons:* The foreign instrument provides an optimal design for genetic analysis of early development in the zebra fish. *Advice received from:* U.S. Fish and Wildlife Service and a private aquatic toxicology laboratory, May 23, 1997.

The National Institutes of Health, the National Institute of Standards and Technology, Brookhaven National Laboratory, the U.S. Fish and Wildlife Service, and a private aquatic toxicology laboratory advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–15601 Filed 6–12–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Colorado; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and

Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–029. *Applicant:* University of Colorado, Boulder, CO 80309. *Instrument:* Color Center Laser. *Manufacturer:* GWU Lasertechnik, Germany. Intended Use: *See* notice at 62 FR 17783, April 11, 1997.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: *The foreign instrument provides:* (1) a tuning range of 1450 to 1750 nm, (2) minimum power output of 50 mW and (3) a maximum linewidth of 10 GHz. These capabilities are pertinent to the applicant's intended purposes and we know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–15602 Filed 6–12–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–063]

Certain Iron-Metal Castings From India; Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Review.

SUMMARY: On December 6, 1996, the Department of Commerce (''the Department'') published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on certain iron-metal castings from India for the period January 1, 1994 through December 31, 1994 (61 FR 64669). The Department has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended. For information on the net subsidy for each reviewed company, and for all non-reviewed companies, see the *Final Results of Review* section of this notice. We will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: June 13, 1997.

FOR FURTHER INFORMATION CONTACT: Christopher Cassel or Lorenza Olivas, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 C.F.R. 355.22(a), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. The producers/exporters of the subject merchandise for which this review was requested are:

Calcutta Ferrous	Kajaria Iron Castings Pvt. Ltd	RSI Limited.
Carnation Enterprise Pvt. Ltd.	Kejriwal Iron & Steel Works	Seramapore Industries Pvt. Ltd.
Commex Corporation	Nandikeshwari Iron Foundry Pvt. Ltd	Shree Rama Enterprise.
Crescent Foundry Co. Pvt. Ltd.	Orissa Metal Industries	Shree Uma Foundries.
Delta Enterprises	R.B. Agarwalla & Company Pvt. Ltd	Siko Exports.
Dinesh Brothers	R.B. Agarwalla & Co	Super Iron Foundry.
Uma Iron & Steel	Victory Castings Ltd	

Delta Enterprises, Orissa Metal Industries, R.B. Agarwalla & Co. Pvt. Ltd., Shree Uma Foundries and Uma Iron & Steel did not export the subject merchandise during the period of review (''POR''). Therefore, these companies have not been assigned an individual company rate for this administrative review. This review covers the period January 1, 1994 through December 31, 1994, and nineteen programs.

Since the publication of the preliminary results on December 6, 1996, we invited interested parties to comment on the preliminary results. On January 6, 1997, case briefs were submitted by the Engineering Export Promotion Council of India (EEPC) and the exporters of certain iron-metal castings to the United States (respondents) during the review period and the Municipal Castings Fair Trade Council and its members (petitioners). On January 13, 1997, rebuttal briefs were submitted by the EEPC, respondents and petitioners.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (''URAA'') effective January 1, 1995 (''the Act''). The Department is conducting this administrative review in accordance with § 751(a) of the Act.

Scope of the Review

Imports covered by the administrative review are shipments of Indian manhole covers and frames, clean-out covers and frames, and catch basin grates and frames. These articles are commonly called municipal or public works castings and are used for access or drainage for public utility, water, and sanitary systems. During the review period, such merchandise was classifiable under the *Harmonized Tariff Schedule* (''HTS'') item numbers 7325.10.0010 and 7325.10.0050. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Verification

As provided in § 782(i) of the Act, we verified information submitted by the Government of India and certain producers/exporters of the subject merchandise. We followed standard verification procedures, including meeting with government and company officials and examination of relevant accounting and financial records and other original source documents. Our verification results are outlined in the public versions of the verification reports, which are on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

Analysis of Programs

Based upon the responses to our questionnaire, the results of verification, and written comments from the interested parties we determine the following:

I. Programs Conferring Subsidies

A. Programs Previously Determined to Confer Subsidies

1. Pre-Shipment Export Financing

In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, have not led us to change our preliminary findings. Accordingly, the net subsidies for this program remain unchanged from the preliminary results and are as follows:

Manufacturer/exporter	Rate (percent)
Calcutta Ferrous	0.12
Carnation Enterprise Pvt. Ltd.	0.24
Commex Corporation	0.03
Crescent Foundry Co. Pvt. Ltd.	0.04
Dinesh Brothers	0.57
Kajaria Iron Castings Pvt. Ltd.	0.40
Kejriwal Iron & Steel Works	0.00
Nandikeshwari Iron Foundry Pvt. Ltd.	0.24
R.B. Agarwalla & Company	0.03
RSI Limited	0.59
Seramapore Industries Pvt. Ltd.	0.04
Shree Rama Enterprise	0.00
Siko Exports	0.00
Super Iron Foundry	0.25
Victory Castings Ltd.	0.25

2. Pre-Shipment Export Credit in Foreign Currency (''PCFC'')

In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, have not led us to change our preliminary findings. Accordingly, the net subsidies for this program remain unchanged from the preliminary results and are 0.45 percent for Calcutta Ferrous and 0.00 percent for all other producers/exporters of the subject merchandise.

3. Post-Shipment Export Financing

In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, have not led us to change our preliminary findings. Accordingly, the net subsidies for this program remain unchanged from the preliminary results and are 0.03 percent for Dinesh Brothers Pvt. Ltd., 0.02 percent for Super Iron Foundry and 0.00 percent for all other producers/exporters of the subject merchandise.

4. Post-Shipment Export Credit in Foreign Currency (''PSCFC'')

In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, have not led us to change our preliminary findings. Accordingly, the net subsidies for this program remain unchanged from the preliminary results and are as follows:

Manufacturer/exporter	Rate (percent)
Calcutta Ferrous	1.91
Carnation Enterprise Pvt. Ltd.	0.14
Commex Corporation	0.91
Crescent Foundry Co. Pvt. Ltd.	0.59
Dinesh Brothers	1.45
Kajaria Iron Castings Pvt. Ltd.	3.54
Kejriwal Iron & Steel Works	0.10
Nandikeshwari Iron Foundry Pvt. Ltd.	2.74
R.B. Agarwalla & Company	0.67
RSI Limited	2.21
Seramapore Industries Pvt. Ltd.	2.15
Shree Rama Enterprise	0.00
Siko Exports	2.23
Super Iron Foundry	0.00
Victory Castings Ltd.1.91%	1.77

5. Income Tax Deductions Under Section 80 HHC

In the preliminary results we found that this program conferred countervailable subsidies on the subject merchandise under section 771(5A)(B) (Note: The preliminary results mistakenly indicated the section as 772(5A)(B)). Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, have not led us to change our preliminary findings. Accordingly, the net subsidies for this program remain unchanged from the preliminary results and are as follows:

Manufacturer/exporter	Rate (percent)
Calcutta Ferrous	3.19
Carnation Enterprise Pvt. Ltd	2.15
Commex Corporation	0.45
Crescent Foundry Co. Pvt. Ltd	7.52
Dinesh Brothers	0.00
Kajaria Iron Castings Pvt. Ltd	11.64
Kejriwal Iron & Steel Works	15.04
Nandikeshwari Iron Foundry Pvt. Ltd	0.28
R.B. Agarwalla & Company	3.86
RSI Limited	4.89
Seramapore Industries Pvt. Ltd	7.02
Shree Rama Enterprise	13.09
Siko Exports	2.28
Super Iron Foundry	0.05
Victory Castings Ltd	0.00

6. Import Mechanisms (Sale of Licenses)

In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, have not led us to change our preliminary findings. Accordingly, the net subsidies for this program remain unchanged from the preliminary results and are 0.24 percent for Kajaria Iron Castings Pvt. Ltd, 0.06 percent for Kejriwal Iron & Steel Works, 0.15 percent for Seramapore Industries Pvt. Ltd, and 0.00 percent for all other producers/exporters of the subject merchandise.

7. Exemption of Export Credit From Interest Taxes

In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, have not led us to change our preliminary findings. Accordingly, the net subsidies for this program remain unchanged from the preliminary results and are as follows:

Manufacturer/exporter	Rate (percent)
Calcutta Ferrous	0.09
Carnation Enterprise Pvt. Ltd	0.03
Commex Corporation	0.03
Crescent Foundry Co. Pvt. Ltd	0.02
Dinesh Brothers	0.16
Kajaria Iron Castings Pvt. Ltd	0.24
Kejriwal Iron & Steel Works	0.00
Nandikeshwari Iron Foundry Pvt. Ltd	0.15
R.B. Agarwalla & Company	0.02
RSI Limited	0.12
Seramapore Industries Pvt. Ltd	0.06
Shree Rama Enterprise	0.00
Siko Exports	0.13
Super Iron Foundry	0.07
Victory Castings Ltd	0.08

B. Other Program Determined to Confer Subsidies

In the preliminary results we found that the following new program conferred countervailable benefits on the subject merchandise:

Payment of Premium Against Advance License

Our analysis of the comments submitted by the interested parties, summarized below, have not led us to change our findings from the preliminary results. Accordingly, the net subsidies for this program are 3.65 percent *ad valorem* for Dinesh Brothers Pvt. Ltd. and 0.00 percent for all other producers/exporters of the subject merchandise.

II. Programs Found To Be Not Used

In the preliminary results we found that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under the following programs:

1. Market Development Assistance (MDA)
2. Rediscounting of Export Bills Abroad
3. International Price Reimbursement Scheme (IPRS)
4. Cash Compensatory Support Program (CCS)
5. Programs Operated by the Small Industries Development Bank of India (SIDBI)
6. Export Promotion Replenishment Scheme (EPRS) (IPRS Replacement)
7. Export Promotion Capital Goods Scheme
8. Benefits for Export Oriented Units and Export Processing Zones
9. Special Imprest Licenses
10. Special Benefits
11. Duty Drawback on Excise Taxes

We did not receive any comments on these programs from the interested parties, and our review of the record have not led us to change our findings from the preliminary results.

Analysis of Comments

Comment 1

Respondents contest the Department's use of a rupee-loan interest rate, adjusted for exchange rate changes, as the benchmark to calculate the benefit on PSCFC loans. According to respondents, this is inconsistent with item (k) of the ''Illustrative List of Export Subsidies,'' annexed to the Agreement on Subsidies and Countervailing Measures. Item (k) provides that an ''export credit'' is a subsidy only if those credits are granted by governments at interest rates below the cost of funds to the government. Because the Indian commercial banks providing PSCFC loans could themselves borrow at LIBOR-linked rates, the appropriate benchmark, respondents claim, is a LIBOR-linked interest rate. Accordingly, PSCFC loans should not be considered beneficial to the extent that they are provided at rates above the appropriate benchmark, *i.e.*, the rate at which Indian commercial banks could borrow U.S. dollars.

According to petitioners, the Department has consistently rejected the ''cost-to-government'' methodology of item (k), because that approach does not adequately capture the benefits provided under short-term financing programs. In support of their argument, petitioners cite the Department's determinations in *Extruded Rubber Thread from Malaysia; Final Results of Countervailing Duty Administrative Review*, 60 FR 17515, 17517 (April 6, 1995) and *Certain Textile Mill Products from Mexico; Final Results of Countervailing Duty Administrative Review*, 56 FR 12175, 12177 (March 22, 1991). Petitioners also cite the 1989 final results of *Certain Textile Mill Products from Mexico*, in which the Department stated:

> When we have cited the Illustrative List as a source for benchmarks to identify and measure export subsidies, those benchmarks have been consistent with our long-standing practice of using commercial benchmarks to measure the benefit to recipient of a subsidy program. The cost-to-government standard in item (k) of the Illustrative List does not fully capture the benefits provided to recipients of FOMEX financing. Therefore, we must [sic] use a commercial benchmark to calculate the benefit from a subsidy, consistent with the full definition of ''subsidy'' in the statute.

54 FR 36841, 36843 (1989). According to petitioners, the Department's repudiation of the ''cost-to-government'' standard contemplated in item (k) was upheld and restated in the *Statement of Administrative Action: Agreement on Subsidies and Countervailing Measures*, H. Doc. No. 316, 103d Cong., 2d Sess. 927–928 (1994). For these reasons, the Department should reject respondents' argument and adopt as a benchmark a non-preferential interest rate based on the ''predominant'' form of short-term financing in India.

Department's Position

We disagree with respondents that the Department should use a LIBOR-linked interest rate as an appropriate benchmark for the PSCFC program. In examining whether a short-term export loan confers countervailable benefits, the Department must determine whether ''there is a difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.'' *See* § 771(5)(E)(ii) of the Act. *See also* S. Rep. No. 412, 103d Cong., 2d Sess. 91 (1994).

In this case, we have determined that commercial financing comparable to PSCFC is the ''cash credit'' interest rate. As we explained in *Certain Iron-Metal Castings From India: Preliminary Results of Countervailing Duty Administrative Review*, 61 FR 64669, 64671 (December 6, 1996) (*1994 Castings Prelim*), the ''cash credit'' interest rate is for domestic working capital finance, comparable to pre- and post-shipment export working capital finance. We also found that PSCFC loans are limited only to exporters, and only exporters have access to LIBOR-linked interest. Therefore, in accordance with § 771(5)(E)(ii) of the Act, because the interest rate on PSCFC loans is less that what a company would have to pay on a comparable ''cash credit'' short-term loan, we determined that PSCFC loans confer countervailable benefits. Because we found that PSCFC loans are limited to exporters and that non-exporters do not have access to these low-cost financing rates, loans with interest rates linked to LIBOR clearly do not represent the ''comparable commercial loan that the recipient could actually obtain on the market.'' The fact that commercial banks may borrow at LIBOR-linked rates is, therefore, irrelevant to our finding.

Petitioners correctly note that the Department has consistently rejected the ''cost-to-government'' standard of item (k) of the Illustrative List, which respondents cite in support of their argument that the appropriate benchmark for PSCFC loans should be a LIBOR linked interest rate. The cost-to-government standard contemplated in item (k) does not limit the United States in applying its own national countervailing duty law to determine the countervailability of benefits on goods exported from India. *See, e.g., Porcelain-on-Steel Cookingware From Mexico; Final Results of Countervailing Duty Administrative Review*, 57 FR 562 (January 7, 1992). Therefore, in accordance with the U.S. countervailing duty law and the Department's past practice, we will continue to use as a benchmark the ''comparable'' cash credit commercial loan rate that Indian exporters would actually obtain on the market to determine whether PSCFC loans confer countervailable benefits upon exports of the subject merchandise to the United States.

Comment 2

According to respondents, for purposes of the § 80 HHC tax program, earnings from the sale of licenses are considered export income which may be deducted from taxable income to determine the tax payable by the exporter. Therefore, because revenue from the sale of licenses are also part of the deductions under § 80 HHC, to countervail this revenue and the deduction results in double counting the subsidy from the sale of licenses. Respondents also contend that the Department is double counting the subsidy from the export financing programs. The financing programs reduce the companies' expenses in financing exports, which in turn increases profits on export sales. Because the § 80 HHC deduction increases as export profits increase, the financing programs increase the § 80 HHC deduction. Therefore, respondents argue, countervailing the financing programs and the § 80 HHC deduction means the benefit to the exporter is countervailed twice.

According to respondents, the Department rejected similar arguments in the 1990 administrative review of this case, stating that an adjustment to the § 80 HHC benefit to account for other subsidies is contrary to our practice of disregarding secondary tax effects of subsidies. *See Certain Iron-Metal Castings from India: Final Results of Countervailing Duty Administrative Review,* 60 FR 44849, 44854 (August 29, 1995). However, the 1990 final results were appealed to the Court of International Trade (CIT), and on December 26, 1996, the CIT ruled in that appeal. *See Crescent Foundry Co., et al. v. United States,* 951 F.Supp. 252 (CIT 1996) (*Crescent*). In that ruling, the CIT addressed the issue of double-counting, stating:

> Commerce cited this policy of disregarding secondary tax consequences as the reason for refusing to eliminate countervailed CCS payments from its calculation of the § 80 HHC subsidy. [citation omitted] However, the logic of that policy would seem to dictate the opposite result: that when companies pay lower taxes as a result of receiving a subsidy, Commerce should not add the additional tax benefit to the amount of the subsidy when calculating the benefit conferred. That is, it should not countervail the tax exemption for that subsidy. * * *

Id. at 261. The issue was then remanded by the CIT for ''a reexamination of whether countervailing the portion of the § 80 HHC subsidy attributable to CCS over-rebates double-counts the CCS subsidy.'' *Id.*

Respondents argue that the Department should reexamine its preliminary results in this review in light of the CIT's ruling in *Crescent,* and find that the subsidy from export financing and import license sales was double counted when the unpaid tax on those subsidies was also countervailed under § 80 HHC.

Petitioners contend that the Department's prior findings on this issue should be upheld in this administrative review on the basis of (1) the facts on the record; (2) because the subsidies being countervailed are separate and distinct; (3) because the Department has a consistent policy of not examining the tax consequences of tax exemptions related to loans and grants; and (4) there is no reasonable way for the Department to isolate the alleged effects on respondents' export tax liability. For these reasons, the Department should reject respondents' double-counting allegations.

Petitioners indicate that the Department's policy of not examining secondary tax effects of subsidies has been upheld in the courts. In support of this, petitioners cite *Geneva Steel v. United States,* 914 F. Supp. 563, 609–610 (CIT 1996) (*Geneva Steel*); *Ipsco, Inc. v. United States,* 687 F. Supp. 614, 621–22 (Ct. Int'l Trade 1988); and *Michelin Tire v. United States,* 6 CIT 320, 328 (1983), *vacated on other grounds,* 9 CIT 38 (1985). According to petitioners, the legislative history of the URAA also makes clear that in determining whether a countervailable subsidy exists, the Department is not required to consider the effect of the subsidy. *SAA,* H.R. Doc. No. 103–316 at 926 (1994). When applied to the alleged double-counting issue, this means that the Department does not have to consider whether subsidies in the form of grants or loans have any effect on the § 80 HHC tax program when determining whether subsidies under § 80 HHC are countervailable. Petitioners assert that this is the only reasonable policy given the difficulties in calculating such secondary effects. Furthermore, petitioners argue that even if the Department could consider the secondary effect of a subsidy program in determining its countervailability, the Department's ability to correct for unfair subsidization would be impaired, as governments would structure subsidy programs to appear to have overlapping effects.

Petitioners state that the Department has applied this policy in all cases involving grant and loan programs as well as income tax programs. Only in two previous cases did the Department make different findings. *See Carbon Steel Wire From Argentina; Suspension of Investigation,* 47 FR 42393 (September 17, 1982), and *Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders; Certain Welded Steel Pipe and Tube Products From Argentina,* 53 FR 37619 (September 27, 1988). In the Argentine cases, the Department found that excessive rebates of indirect taxes were countervailable. The petitioners at the time claimed that there was an additional subsidy due to the fact that the rebates were not subject to income taxes. The Department determined in those cases that it had captured the full benefit by countervailing the overrebate.

Petitioners point out, however, that factual circumstances in these cases were different from those in the Indian castings reviews. In the Argentine cases, the Department did not examine whether there was a benefit as a result of the tax exemption because the overrebates were provided through a non-income tax program. Indian castings exporters, in contrast, were found to have benefitted from both non-income tax programs (grants and loans), in addition to the § 80 HHC income tax program. According to petitioners, in such cases, it is the Department's policy to countervail both types of programs as separate and distinct subsidies.

Petitioners claim that the recent CIT ruling in *Crescent* does not upset the Department's policy with respect to this issue, or the prior CIT cases upholding that policy. Rather, the CIT has merely requested that the Department on remand (1) reexamine whether countervailing the portion of the § 80 HHC subsidy attributable of the CCS overrebate results in a double-counting of the CCS subsidy and (2) explain whether the Department's determination in *Argentine Wire Rod* continues to reflect current agency policy.

Petitioners indicate that respondents do not provide any comment on how the Department should correct for alleged double-counting under § 80 HHC. According to petitioners, even if the Department had the necessary data in this review to isolate all of the revenues and expenses, doing so would be too difficult and burdensome for the agency to accomplish. Accordingly, the Department should conclude that any attempt to trace the tax consequences of other subsidies would be overly complicated and administratively burdensome.

Department's Position

Respondents' argument that the subsidy under the export financing and import licensing programs has been countervailed twice, by also countervailing the full amount of the § 80 HHC deduction, is incorrect. With respect to the CIT's ruling in *Crescent,* the Department responded to the court's instructions on February 24, 1997, in the *Final Results of Redetermination on Remand Pursuant to Crescent Foundry Co. Pvt. Ltd., et al. v. United States* (*Crescent Remand*).

As we explained in the *Crescent Remand,* adjusting the § 80 HHC subsidy to take into account the CCS grants (in this review revenue from the export financing programs and earnings from the sale of licences) would be in conflict with the countervailing duty law, Department regulations, and longstanding Department policy. This type of adjustment is inappropriate because, if made, it would: (1) require the Department to examine the secondary effects and uses of a subsidy; (2) expand the statutory definition of a permissible offset to a subsidy; and (3) require the Department to no longer countervail the full amount of the benefit provided by a government subsidy program.

The Department explained fully its reasoning with respect to this issue in the 1991 final results of this case, and in the recently completed 1992 and 1993 final results. *See Certain Iron-Metal Castings From India: Final Results of Countervailing Duty Administrative Review,* 60 FR 44843, 44848 (August 29, 1995) (*1991 Castings Final*), *Certain Iron-Metal Castings From India: Final Results of Countervailing Duty Administrative Review,* 61 FR 64687, 64692 (December 6, 1996) (*1992 Castings Final*), and *Certain Iron-Metal Castings From India: Final Results of Countervailing Duty Administrative Review,* 61 FR 64676, 64685 (December 6, 1996) (*1993 Castings Final*). It has been and continues to be our policy to ignore *any* secondary effect of a direct subsidy on a company's financial performance. This policy has been upheld by the court. *See, e.g., Saarstahl AG v. United States,* 78 F.3d 1539, 1543 (Fed. Cir. 1996).

With respect to the *Argentine Wire Rod* case, we stated in the *Crescent Remand* that there was not sufficient information to determine whether or not the Department should have investigated the allegation of an income tax benefit. However, we also stated that under our current approach, and under the approach adopted in the overwhelming majority of cases, we would not take into account the secondary effect of an income tax deduction on the calculation of the benefit conferred under the rebate of indirect taxes (reembolso) program in Argentina. Likewise, the Department would not take into account the secondary effects of that rebate program on the calculation of the benefit conferred by an income tax deduction program. If *Argentine Wire Rod* is interpreted as suggesting that the Department would not investigate and calculate separate benefits for a rebate program and a tax deduction program, then *Argentine Wire Rod* must be considered an anomaly and not reflective of current Department policy or of Department policy in other case precedents. *Crescent Remand* at 4.

In all of the cases where we have actually examined both grant and tax programs, this principle has been applied, even though it has not always been expressly discussed. *See, e.g., Final Affirmative Countervailing Duty Determination: Certain Pasta From Turkey,* 61 FR 30366 (June 14, 1996) *(Pasta from Turkey); Final Affirmative Countervailing Duty Determination: Certain Pasta (''Pasta'') From Italy,* 61 FR 30288 (June 14, 1996) *(Pasta From Italy); Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Extruded Rubber Thread From Malaysia,* 57 FR 38472 (Aug. 25, 1992) *(Malaysian Rubber Thread); Final Affirmative Countervailing Duty Determinations: Certain Steel Products From Belgium,* 58 FR 37273 (July 29, 1993) *(Belgian Steel);* and *Final Affirmative Countervailing Duty Determination; Certain Fresh Atlantic Groundfish From Canada,* 51 FR 10041 (March 24, 1986) *(Groundfish from Canada).* For example, in *Belgian Steel* the Department found cash grants and interest subsidies under the Economic Expansion Law of 1970 to constitute countervailable subsidies. At the same time, the Belgian government exempted from corporate income tax, grants received under the same 1970 Law. The Department found the exemption of those grants from income tax liability to be a separate countervailable subsidy. We determined that a benefit had been provided under the grant program and an additional benefit was provided by the tax exemption. In calculating the benefit from the grant program, the Department did not take into account the secondary effects of income taxation on those grants. Likewise, the Department did not adjust the benefit from the tax exemption to take into account the secondary effects of non-tax programs on the tax exemption program. The pertinent fact here is that the Department, in examining whether a subsidy was conferred under the tax exemption provided by the Belgian Government, did not take into account the secondary effect of other government subsidy programs in deciding whether a countervailable benefit was conferred under the tax exemption program. We did not factor in the grant in determining whether a benefit was received from the tax exemption, and our decision would have been the same regardless of the fact that the subsidy from the tax exemption for the period of review in question was 0.00 percent.

It is our view that the export financing and import license subsidies are not being double-counted and that the § 80 HHC income tax exemption is a separate and distinct subsidy from those subsidies. For example, pre-and post-shipment export financing permits exporters to obtain short-term loans at preferential interest rates. The countervailable benefit from that program is the difference between the amount of interest respondents actually pay and the amount of interest they would have to pay at comparable interest rates on the market. In an analogous manner, the revenue from the sale of licenses is considered to be a grant to the company, and that grant constitutes the benefit. On the other hand, the countervailable portion of the § 80 HHC program is the amount of taxes on all export income (both of subject and non-subject merchandise) that is exempted and that otherwise would have been paid absent the tax deduction. Just as the Department does not consider the income tax effect on the amount of a grant to be countervailed (*i.e.,* by deducting from the grant the amount of taxes that may have been due on the grant), it does not consider the secondary effect of other direct subsidy programs on the amount of the tax deduction because both programs provide separate and distinct countervailable benefits. If companies knew we would reduce their tax liability by the amount of other subsidies received, the Department would be, in essence, encouraging companies that receive countervailable income tax exemptions to use as many non-tax subsidy programs as possible because these companies would end up with the same countervailing duty rate as those companies that had no countervailable income tax deductions.

Finally, we also have not followed the Court's decision in *Crescent,* because that case does not represent a final and conclusive decision and may yet be appealed. For these reasons, our determination and calculation of the countervailable benefit conferred on the castings exporters from the § 80 HHC program is in accordance with record evidence, Department policy, and is otherwise in accordance with law.

Comment 3

According to respondents, each type of payment received under the IPRS, CCS, the sales of licenses, and duty drawback program, is considered export income and is, therefore, deducted from taxable income under § 80 HHC. Accordingly, because revenues from the CCS, IPRS, duty drawback, and sales of certain licenses are not related to, and were not earned on exports of subject castings to the United States, they should not be included in the calculation of § 80 HHC benefits. Respondents claim they are not suggesting that the Department offset the § 80 HHC subsidy, which would be impermissible under § 771(6) of the Act; nor are they asking the Department to disregard secondary tax effects. Rather, respondents maintain that because the income does not relate to subject castings at all, the unpaid tax on this income cannot be a subsidy benefiting the subject merchandise.

Respondents further note that they had raised this issue in the 1990 administrative review, and that the Department rejected the argument. According to respondents, the CIT has ruled on their appeal on this issue, stating:

> When Commerce specifically finds that a rebate program did not benefit merchandise subject to the countervailing duty order under review, Commerce cannot then countervail any of the benefit received through that program.

Crescent, 951 F. Supp. at 262. The CIT then remanded the issue to the Department, requiring ''recalculation of the benefit received through § 80 HHC after subtracting the value of IPRS payments received from each company's taxable income.'' *Id.* Accordingly, respondents argue that the Department should recalculate the § 80 HHC benefit in accordance with the court's ruling in the final results of this administrative review.

Petitioners assert that the Department should sustain its practice of allocating the benefit from the § 80 HHC program over total exports, because the program provides a subsidy associated with the export of all goods and merchandise. According to petitioners, this practice is consistent with § 355.47(c)(1) of the *1989 Proposed Rule.* Furthermore, contrary to respondents' claim that this policy elevates substance over form, it recognizes that a subsidy that is not tied to the export of particular products is different from a subsidy that is tied directly to one or more specific products.

Petitioners argue that if the Department were to adopt respondents' approach, it would trace specific revenues to determine the tax consequences of those revenues. While petitioners recognize that the Department must conform to the Court's order in *Crescent* for the 1990 review period, they also state that the Court's determination is subject to appeal. Accordingly, no final determination of this issue has yet been reached. Absent any binding judicial precedent that affects Department policy on this issue, petitioners urge the Department to continue to apply its consistent practice for purposes of the final results.

Department's Position

We disagree with respondents. It is our view that the Department's rationale set forth above in Comment 2 for not adjusting the § 80 HHC subsidy calculations for revenue earned on the sale of export licenses and savings from pre- and post-shipment export financing applies equally to not adjusting the § 80 HHC subsidy calculations for revenues from the CCS, IPRS, duty drawback, and sales of certain licenses not related to exports of subject castings to the United States. Further, the Department's approach is consistent with longstanding and judicially upheld allocation principles that underlie our countervailing duty methodology.

Under the Department's past practice, where we determined that a subsidy is ''tied'' *only* to non-subject merchandise, that subsidy, of course, will not be attributed to the merchandise under investigation. To do so would violate the countervailing duty law which authorizes the Department to countervail only those subsidies that benefit subject merchandise.

In this case, however, the benefit is not ''tied'' to either subject or non-subject merchandise, but applies across the board to all of the firm's export revenue, *i.e.*, it is applicable to exports of both subject and non-subject merchandise. Under this type of situation, it is the Department's longstanding practice to allocate the benefit to the merchandise to which the benefit applies in order to produce an ''apples-to-apples'' comparison. If a benefit is ''tied'' to subject merchandise, then the subsidy is determined by allocating the total benefit over the sales of subject merchandise only. However, if a benefit is firm-wide and not ''tied'' to specific merchandise, then the benefit is allocated over the firm's total sales, if it is a domestic subsidy, or over total exports, if it is an export subsidy. Either method provides for fair and accurate results.

Under this longstanding practice, it is imperative that both the numerator (the benefit) and denominator (the universe of sales to which the benefit applies) used in our calculation of a subsidy reflect the same universe of goods. Otherwise the rate calculated will either over- or understate the subsidy attributable to the subject merchandise. If the numerator reflects a benefit ''tied'' to one particular product, then the denominator must reflect total sales or exports of only that product. Likewise, if the numerator reflects a benefit that is ''untied'' and applies to all products, then the denominator must consist of total sales (if a domestic subsidy) or total exports (if an export subsidy) of all products.

This is precisely the situation concerning the § 80 HHC program, where a company can claim a tax deduction against taxable income (*i.e.,* the company's profit prior to deductions) equal in amount to the profit it earned on *all* exports, both of subject and of non-subject merchandise. Indeed, this is a classic type of ''untied'' subsidy program—where the benefit is broad-based and not ''tied'' to a specific product or market. When calculating the benefit from an export subsidy such as the § 80 HHC program, the Department does not deduct from the subsidy amount (the numerator) any benefits attributable to non-subject merchandise because the benefit is not ''tied'' to a specific product or market. Indeed, such an endeavor would be impossible. Rather, in order to determine the correct benefit for this type of export subsidy program, the Department divides the ''untied'' benefit by the company's total exports, which include both subject and non-subject merchandise. This calculation, dividing the ''untied'' § 80 HHC tax deduction claimed on all exports by each firm's total exports, is consistent with longstanding Department practice. *See, e.g., Malaysian Rubber Thread; Pasta From Turkey; Lamb Meat from New Zealand; Final Affirmative Countervailing Duty Determination; Standard Carnations From Chile,* 52 FR 3313 (February 3, 1987); *Final Affirmative Countervailing Duty Determination: Miniature Carnations From Colombia,* 52 FR 32033 (August 25, 1987); *Final Affirmative Countervailing Duty Determinations: Certain Steel Products From Mexico,* 58 FR 37352 (July 9, 1993); and the *Final Affirmative Countervailing Duty Determination; Certain Stainless Steel Cooking Ware From the Republic of Korea,* 51 FR 42867 (November 26, 1986). By allocating this ''untied'' benefit over both the company's subject and non-subject exports, we made an ''apples-to-apples'' comparison which accurately reflected the net subsidy attributable to exports of subject merchandise.

As petitioners noted, the Court's ruling in *Crescent* was not a final and conclusive court decision and is still subject to appeal. Accordingly, absent such a binding judicial precedent that affects the Department policy on this issue, we do not intend to not change our methodology for calculating the benefit conferred to castings exporters from the § 80 HHC program. Also, for the reasons outlined above, it is our view that our current approach is in accordance with record evidence and Department policy, and is otherwise in accordance with law.

Comment 4

According to respondents, certain castings exporters segregated profits relating to subject merchandise sales from profits relating to sales of non-subject merchandise. For these companies, respondents claim, the Department should calculate the § 80 HHC subsidy based on profits relating to the subject merchandise only. For example, a calculation submitted by Kajaria Iron Castings shows the percentage of the company's total sales during the POR that were related to sales of the subject merchandise. Kajaria then applied that percentage to the company's total profits to derive the profit relating to sales of the subject merchandise. With respect to this company, respondents argue that the Department should have calculated the § 80 HHC benefit based only on profits relating to subject merchandise sales.

Petitioners first urge the Department to reject Kajaria's calculation, because they claim it is factual information submitted after the Department's deadline. Petitioners further contend that the company's calculation does not demonstrate how Kajaria derived the profit on sales of the subject merchandise. Rather, the company merely determined what percentage of its total sales were comprised of subject castings and applied that percentage to its profit. According to petitioners, the Department did not verify Kajaria's calculation, and, in any case, it would not allow the Department to determine accurately what portion of Kajaria's export profit was attributable to subject exports.

Petitioners argue that Kajaria's calculation does not provide a reasonable basis to disaggregate the benefit attributable to various exported products under the § 80 HHC program. The calculation presumes that in all cases there is a one-to-one correspondence between sales revenue, cost of production and profits. Petitioners assert, however, that the profit attributable to sales of different items will vary according to several factors, including time period, destination, customer, etc. In any case, petitioners state, it would be difficult to perform a consistent analysis across different companies, because each company may calculate end-of-year profit differently, depending on accounting decisions made in any given year. Therefore, any attempt to conduct such an analysis would be complicated and too administratively burdensome for the Department.

Petitioners further argue that even if the profit attributable to the subject merchandise could be traced, the results could be anomalous, depending on the amount of the profit that is attributable to subject castings. For example, if the profit margin on subject castings in a given year is less than usual, the company's countervailable benefit would be relatively less for sales of that product. Conversely, if during a given period subject castings contributed more than usual to profits, the company would receive a larger countervailable benefit. Petitioners point out, however, that respondents are not suggesting that the countervailing duty margins should be increased because the operations of subject castings have become more profitable. For these reasons, petitioners argue that the Department should reject respondents proposal.

Department's Position

At the outset, we must note that petitioners incorrectly claim that Kajaria's calculation, resubmitted by respondents in their January 6, 1997, case brief, is factual information submitted after the Department's deadline. This calculation was originally provided by the company in its March 13, 1996, original questionnaire response, at Annexure B.

With respect to respondents' argument that the Department should have calculated the § 80 HHC subsidy based on profits relating to subject castings only, we disagree. Where a benefit is not tied to a particular product, the Department's consistent and longstanding practice is to attribute the benefit to all products exported by a firm where the benefit is received pursuant to an export subsidy program. *See, e.g., Pasta From Turkey,* 61 FR at 30370; and the *1993 Castings Final,* 61 FR at 64683.

As explained above in the Department's position on Comment 3, the benefit under § 80 HHC applies, in this case, to exports of both subject and non-subject merchandise. The benefit, therefore, is not tied to any specific products manufactured or exported by a firm. If a benefit is firm-wide and not ''tied'' to specific merchandise, then that benefit is allocated over the firm's total exports, in the case of an export subsidy. By allocating the ''untied'' benefit under § 80 HHC over a company's total exports, we are making an ''apples-to-apples'' comparison. This methodology accurately produces the net subsidy attributable to exports of the subject merchandise and provides for fair and accurate results.

We also note that respondents have not, under their methodology, requested that the Department adjust the denominator in calculating the § 80 HHC benefit. Accordingly, the net benefit to the company under this approach would be grossly understated because the ''apples-to-apples'' comparison would be lost. In fact, the numerator (the benefit adjusted according to respondents' methodology) would reflect a benefit tied to the subject merchandise, while the denominator would still cover total exports. This result is not only inconsistent with Department practice, but is contrary to countervailing duty law. For these reasons, our calculation of the subsidy under § 80 HHC remains unchanged from the preliminary results.

Comment 5

In prior administrative reviews of this case, the Department used the small-scale industry (SSI) short-term interest rate as published by the Reserve Bank of India (RBI) to measure the benefit under the pre- and post-shipment export financing schemes. In this review, however, the Department changed its benchmark, adopting the ''cash credit'' short-term interest rate, as reported by the Government of India (GOI) in its March 13, 1997, original questionnaire response. According to respondents, the Department's justification for changing the benchmark was based on a statement by Small Industries Development Bank of India (SIDBI) officials at verification that castings exporters are not eligible for SIDBI financing at the small scale industry (SSI) interest rates. On December 2, 1996, following release of the Department's GOI verification report, respondents submitted a comment on that report, clarifying that ''all SSI castings exporters were eligible for non-export credit as SSI rates during the [POR].'' Accordingly, respondents argue that the Department should use the SSI interest rate as a benchmark to calculate the benefit from the export financing programs. Respondents made similar arguments in their rebuttal brief which will not be repeated in a separate comment.

Petitioners first argue that respondents December 2, 1996, letter constitutes new, unsolicited information and should be rejected. Petitioners further assert that record evidence does not support a finding that castings exporters in fact obtained non-export credit at SSI interest rates during the POR, notwithstanding respondents' claim that they were eligible for such credit. According to petitioners, § 771(5)(E)(ii) of the Act directs the Department to select a benchmark based on financing that could actually be received by the recipient, and not one for which respondents merely claim they are eligible to receive.

The Department has, petitioners claim, complied with § 771(5)(E)(ii) of the Act, by selecting a benchmark from a ''comparable'' form of financing. According to GOI officials at verification, cash credit finance is comparable to financing received by exporters under the pre-and post-shipment export financing programs. Petitioners note that the same officials did not make such a claim with respect to SSI interest rates. With respect to the statute's direction to use a benchmark based on financing available ''on the market,'' petitioners assert that respondents failed to explain why market sourced cash credit financing is inferior to government directed SSI financing. Petitioners made similar arguments in their case brief which will not be repeated in a separate comment.

Department's Position

We disagree with respondents. During the POR, the producers/exporters of the subject merchandise obtained short-term financing under the pre- and post-shipment export financing programs. The companies are eligible for these loans based solely on their status as exporters. In determining whether a benefit has been conferred in the case of a loan, the statute very clearly directs the Department to examine ''if there is a difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market''. Section 771(5)(E)(ii) of the Act (emphasis added). While it is true that in prior proceedings of this case, we determined that the SSI interest rate was an appropriate benchmark to use in the calculation of the benefit under the export financing programs, information obtained at verification in this review has led us to change that finding.

In this administrative review, the Department reexamined its use of the SSI interest rate, in part because of new allegations that respondents benefitted from programs administered by the Small Industries Development Bank of India (SIDBI). In our meetings with SIDBI and other GOI officials at verification, we learned that castings producers would not finance their domestic operations at SSI rates, but, rather, that such financing would most likely be linked to the prime lending rate (PLR). It is also our understanding from SIDBI officials that castings exporters were not eligible for financing at SSI rates during the POR. *See* the November 19, 1996, Memorandum for Barbara E. Tillman Re: Verification of the Government of India Questionnaire Responses for the 1994 Administrative Review of the Countervailing Duty Order on Certain Iron Metal Castings from India, at 5 (GOI VR) (Public Version, on file in the Central Records Unit, Room B–099 of the Main Commerce Building).

Respondents now argue that Department officials misunderstood what was stated at verification and that all castings exporters were eligible for SSI-linked financing. However, we disagree. The Department's findings with respect to interest rates are accurately reflected in the verification report. During verification, State Bank of India (SBI) officials stated that the domestic financing ''comparable'' to the pre- and post-shipment export financing during the POR was financing at the ''cash credit'' interest rate, as reported by the GOI in its March 13, 1996, questionnaire response. *See* GOI VR at 5. Furthermore, while respondents now claim that castings exporters were ''eligible'' to obtain SSI-linked financing, they do not dispute statements made by SIDBI officials that for non-export loans, castings exporters ''would most likely borrow at interest rates linked to the PLR.'' GOI VR at 8. The same officials, therefore, who claim that castings exporters are eligible for SSI programs, also believe that these companies would not, in fact, finance their non-export operations at SSI interest rates. This fact was further corroborated by Indian commercial bankers, who stated that an exporters' alternative source of financing during the POR was the PLR plus a spread. *See* the November 19, 1996, Memorandum for Barbara E. Tillman Re: Meeting with Citibank Officials for the 1994 Administrative Review of the Countervailing Duty Order on Certain Iron Metal Castings from India, at 1 (Citibank VR) (Public Document, on file in the Central Records Unit, Room B–099 of the Main Commerce Building). Our discussions with bankers from the RBI also revealed that under the export financing programs, if exporters were unable to meet their obligations within a certain time period, ''banks were free to charge commercial interest rates.'' GOI VR at 2 (emphasis added). According to the RBI bankers, these rates ranged from 16 percent to 21 percent in 1994. Therefore, even if castings exporters were eligible for SSI rates, the rates paid by these companies on overdue export loans were not SSI rates, but, rather, commercial interest rates comparable to those charged to non-exporting companies.

Finally, evidence collected at Calcutta Ferrous, exporter of the subject merchandise, clearly indicates that non-export related financing by these companies was, in fact, not equivalent to the SSI interest rate during the POR. *See* the November 21, 1996, Memorandum for Barbara E. Tillman Re: Verification of the Calcutta Ferrous Limited's Questionnaire Responses for the 1994 Administrative Review of the Countervailing Duty Order on Certain Iron Metal Castings from India, at 3–4 (CF VR) (Public Version, on file in the Central Records Unit, Room B–099 of the Main Commerce Building). Calcutta Ferrous officials explained the company maintains a ''cash credit'' account for domestic financing purposes. The documents we examined at verification showed that the company paid 16 percent on this financing through June 1994 and 19.5 percent after that date. *See* CF VR at 4. Record evidence, therefore, supports the Department's preliminary finding. Accordingly, for these final results, we will continue to use the cash credit interest rate in calculating the benefit from the pre- and post-shipment export financing programs.

Comment 6

According to respondents, in calculating the actual benefit to castings exporters under the PSCFC program, the Department failed to take into account penalty interest paid at interest rates higher than the benchmark. Respondents argue that the Department should have adjusted the benefit on those loans by the excess overdue interest paid by the company at the penalty interest rate because that rate is greater than the benchmark rate. Rather than account for this excess interest paid on the loans, the Department calculated a zero benefit where the interest rate on the portion of the loan that was overdue was higher than the benchmark rate. According to respondents, the Department should have calculated a negative figure and adjusted the actual benefit on the loan.

Petitioners argue that the Department should reject this methodology because it would permit a non-allowable offset to the countervailable benefit under the PSCFC program. According to petitioners, respondents fail to explain why an offset for penalty interest should be allowed when payment of that interest does not fall within the statute's list of allowable offsets under § 771(6). The penalty interest, petitioners assert, does not fall within that list, but, rather, merely assures that the terms of the program are met. The costs associated with such interest charges are, therefore, due to the recipient's failure to comply with the terms of the loan. As such, petitioners state, this is merely a secondary economic effect which the Department has previously determined should not be used as an offset to a program's benefit. *See, e.g., Oil Country Tubular Goods from Canada; Final Affirmative Countervailing Duty Determination,* 51 FR 15037 (April 22, 1986), and *Fabricas el Carmen, S.A.* v. *United States,* 672 F. Supp. 1465 (CIT 1987).

Petitioners further claim that the Department has, in a comparable situation, refused to offset preferential with non-preferential loans in *Oil Country Tubular Goods from Argentina: Final Results of Countervailing Duty Administrative Reviews,* 56 FR 38116, 38117 (August 12, 1991) (*OCTG from Argentina*). In that case, petitioners note, respondents claimed that a loan-by-loan analysis overstated the benefit received and that, taken together, the loans received by the company provided no preferential benefit. In rejecting this argument, the Department asserted that it

> only examines loans received under programs that may potentially be countervailable [sic] if the interest rate is preferential when compared with the benchmark interest rate. We do not consolidate these preferential loans with non-countervailable commercial loans to examine whether the aggregate interest rate paid on a series of loans is preferential. It is not the Department's practice to offset the less favorable terms of one loan as an offset to another, preferential loan.

Id. According to petitioners, the statue by extension also does not allow the Department to offset the less favorable interest period of a loan (the period during which the loan was overdue) with the period in which the loan was provided on preferential terms. This is particularly the case, petitioners state, when the higher penalty interest was a result of the company's failure to comply with the terms of the program.

Department's Position

We disagree with respondents. An adjustment to the benefit under the PSCFC program in the form advocated by respondents would be an impermissible offset to the benefit. Section 771(6) of the Act authorized the Department to subtract from the countervailable subsidy:

> (A) any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy,
> (B) any loss in the value of the countervailable subsidy resulting from its deferred receipt, if the deferral is mandated by Government order, and
> (C) export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the countervailable subsidy received.

As petitioners correctly note, penalty interest under the PSCFC program does not fall within this list of allowable offsets.

Respondents cite no administrative or court precedent in support of their argument, and provide no clear indication how the suggested adjustment would be calculated. Apparently, respondents would have the Department determine the amount of overdue interest that would have been paid by the company at the benchmark interest rate. Overdue interest above this amount would be considered ''excess interest'' and deducted from the benefit calculated for the negotiated part of the loan.

In light of how the PSCFC program operates, respondents' approach is inaccurate. As we explained in the preliminary results, under the PSCFC program, exporters discount their export bills with Indian commercial banks to finance their operations. By discounting an export bill, the company receives payment from the bank in the amount of the export bill, net of interest charges. The loan is considered ''paid'' once the foreign currency proceeds from an export sale are received by the bank. If those proceeds are not paid within the negotiated period, then the loan is considered ''overdue.'' In essence, however, this overdue period is like a new loan, because the original ''discounted loan period'' is fully accounted for, that is, the company has received payment from the bank and the interest on that payment has already been deducted. For the overdue loan, the bank will charge the company interest on the original amount of the loan at higher interest rates. The overdue interest rate varies, depending on the period for which the loan is overdue. Therefore, to determine whether interest charged on the ''overdue'' loan confers a countervailable benefit, we appropriately compared the overdue interest rate with the benchmark rate. If the benchmark rate was higher than the overdue interest rate, we found no benefit. Therefore, the adjustment suggested by respondents is inappropriate given the way in which the PSCFC program is structured.

Further, because respondents characterize interest paid on overdue loans for which the interest rate exceeded the benchmark as ''excess interest,'' respondents'' argument assumes that the overdue interest rate for certain PSCFC loans does not reflect comparable commercial rates. This is incorrect. In fact, statements by Indian government and commercial bankers at verification indicate that the interest rates charged on the overdue portion of PSCFC loans are ''commercial rates.'' *See Citibank VR* at 2 and *GOI VR* at 3–4. The GOI requires banks to charge even higher penalty, rates for some of these loans so that exporters comply with the terms of this preferential financing. Under comparable domestic financing, companies that negotiated short-term working capital loans, but which failed to meet the terms of the loan, would also be subject to penalties if the terms of the loan were not met. For these reasons, the benefit calculations for PSCFC loans have not been changed.

Comment 7

Petitioners state that the Department improperly failed to countervail the value of Advance Licenses because Advance Licenses are export subsidies and not equivalent to duty drawback. According to petitioners, Advance Licenses constitute a countervailable subsidy within the meaning of Item (a) of the Illustrative List of Export Subsidies (Illustrative List), which defines one type of export subsidy as ''[t]he provision by governments of direct subsidies to any firm or any industry contingent upon export performance.'' Because Advance Licenses are issued to companies based on their status as exporters, and because products imported under such a license are duty-free, petitioners state that such licenses provide a subsidy based on the requirement that an export commitment be met.

Petitioners further claim that the Department has in this and previous reviews mistakenly confused the nature of the Advance License program with duty drawback programs. According to petitioners, for a duty drawback program not to be countervailed, it must meet certain conditions outlined in Item (i) of the Illustrative List. Item (i) provides that ''[t]he remission or drawback of import charges [must not be] in excess of those levied on imported goods that are consumed in the production of the exported products (making normal allowance for waste).'' This condition, according to petitioners, has not been met with respect to the Advance License program because the Indian government apparently has made no attempt to determine whether the amount of material that is imported duty-free under Advance Licenses is at least equal to the amount of pig iron contained in exported subject castings, *i.e.*, ''physically incorporated in the exported products.''

Moreover, petitioners argue that respondents' ability to transfer Advance Licenses to other companies under certain conditions is further evidence that this program is not the equivalent of a drawback program because the licenses are not limited to use solely for the purpose of importing duty-free materials. For these reasons, petitioners state that the Department should countervail in full the value of Advance Licenses received by respondents during the POR.

Respondents state that Advance Licenses allow importation of raw materials duty free for the purposes of producing export products. They state that if Indian exporters did not have Advance Licenses, the exporters would import the raw materials, pay duty, and then receive drawback upon export. Respondents argue that although Advance Licenses are slightly different from a duty drawback system, because they allow duty free imports rather than provide for remittance of duty upon exportation, this does not make them countervailable. Respondents also indicate that if an Advance License had been transferred during the POR, then it might have been a subsidy; this did not occur, however.

Department's Position

As we explained in the *1993 Castings Final*, petitioners have only pointed out the administrative differences between a duty drawback system and the Advance License scheme used by Indian exporters. Such administrative differences can also be found between a duty drawback system and an export trade zone or a bonded warehouse. Each of these systems has the same function: each exists so that exporters may import raw materials to be consumed in the production of an exported product without the assessment of import duties.

The purpose of the Advance License is to allow an importer to import raw materials used in the production of an exported product without first having to pay duty. Companies importing under Advance Licenses are obligated to export the products made using the duty-free imports. Item (i) of the Illustrative List specifies that the remission or drawback of import duties levied on imported goods that are consumed in the production of an exported product is not a countervailable subsidy, if the remission or drawback is not excessive. We determined that Advance Licenses are equivalent to a duty remission drawback. That is, the licenses allow companies to import, net of duty, raw materials which are physically incorporated into the exported products. Further, we have never found that castings exporters have transferred an Advance License. Accordingly, our determination that the provision of Advance Licenses is not countervailable remains unchanged.

Final Results of Review

In accordance with 19 CFR 355.22(c)(4)(ii), we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. For the period January 1, 1994 through December 31, 1994, we determine the net subsidy for the reviewed companies to be as follows:

Net subsidies—Producer/ Exporter	Net subsidy rate (percent)
Calcutta Ferrous	5.77
Carnation Enterprise Pvt. Ltd.	2.56
Commex Corporation	1.42
Crescent Foundry Co. Pvt. Ltd.	8.16
Dinesh Brothers	5.85
Kajaria Iron Castings Pvt. Ltd.	16.06
Kejriwal Iron & Steel Works	15.21
Nandikeshwari Iron Foundry Pvt. Ltd.	3.40
R.B. Agarwalla & Company Pvt. Ltd.	4.59
RSI Limited	7.82
Seramapore Industries Pvt. Ltd.	9.43
Shree Rama Enterprise	13.90
Siko Exports	4.65
Super Iron Foundry	0.39
Victory Castings Ltd.	2.10

We will instruct the U.S. Customs Service ("Customs") to assess countervailing duties as indicated above. The Department will also instruct Customs to collect cash deposits of estimated countervailing duties in the percentages detailed above of the f.o.b. invoice price on all shipments of the subject merchandise from reviewed companies, entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. As provided for in 19 CFR § 355.7, any rate less than 0.5 percent *ad valorem* in an administrative review is *de minimis*. Accordingly, for those producers/exporters no countervailing duties will be assessed or cash deposits required.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in § 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 355.22(a). Pursuant to 19 CFR § 355.22(g), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F.Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F.Supp. 766 (CIT 1993) (interpreting 19 CFR § 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR § 355.22(g)). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies (including companies listed on page 2, above, that did not export the subject merchandise during the POR) at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the most recently completed administrative proceeding, completed under the pre-URAA statutory provisions. *See Certain Iron-Metal Castings From India: Final Results of Countervailing Administrative Review*, 61 FR 64676 (December 6, 1996). These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1994 through December 31, 1994, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR § 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with § 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: June 4, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–15606 Filed 6–12–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–357–403]

Oil Country Tubular Goods From Argentina; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on oil country tubular goods (OCTG) from Argentina. For information on the net subsidy, *see* the *Preliminary Results of Review* section of this notice. If the final results remain the same as these preliminary results of administrative review, we will instruct the U.S. Customs Service to assess countervailing duties as indicated in the *Preliminary Results of Review* section of this notice. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 13, 1997.

FOR FURTHER INFORMATION CONTACT: Richard Herring, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4149.

SUPPLEMENTARY INFORMATION:

Background

On November 27, 1984, the Department published in the **Federal Register** (49 FR 46564) the countervailing duty order on oil country tubular goods (OCTG) from Argentina. On November 5, 1992, the Department published a notice of ''Opportunity to Request an Administrative Review'' (57 FR 52758) of this countervailing duty order. We received a timely request for review from the U.S. Steel Group, a unit of USX Corporation.

We initiated the review, covering the period January 1, 1991 through December 31, 1991, on December 29, 1992 (57 FR 61873). The review covers one producer/exporter, Siderca, which accounts for all exports of the subject merchandise from Argentina, and 20 programs.

On September 17, 1993, the Department received allegations regarding new subsidies from the petitioner in the concurrent 1991 administrative review of cold-rolled carbon steel flat-rolled products from Argentina. After a careful review of the allegations, the Department decided that sufficient information was provided regarding alleged benefits provided under two new programs. These programs were alleged tax concessions provided to the steel industry under the April 11, 1991 Steel Agreement signed between the Government of Argentina and the Argentine steel industry, and preferential natural gas and electricity rates also provided under the Steel Agreement. Although these allegations were not made in this administrative review of OCTG, the allegations did pertain to the steel industry in Argentina. Therefore, the Department deemed it appropriate to seek information on the two alleged programs in this administrative review of OCTG.

On January 1, 1995, the effective date of the *Uruguay Round Agreements Act* of 1994 (the URAA), countervailing duty orders involving World Trade Organization (WTO) signatories which had been issued without an injury determination by the International Trade Commission (ITC), became entitled to an ITC injury determination under section 753 of the URAA. The order on OCTG did not receive an ITC injury investigation and Argentina was a member of the WTO. Therefore, we determined that the countervailing duty order on the subject merchandise was subject to section 753 of the URAA. *See Countervailing Duty Order; Opportunity to Request a Section 753 Injury Investigation*, 60 FR 27963 (May 26, 1995). For the countervailing duty order on OCTG from Argentina, the domestic interested parties exercised their right under section 753(a) of the URAA to request an injury investigation.

The Ceramica Decision by the Court of Appeals for the Federal Circuit

On September 6, 1995, the Court of Appeals for the Federal Circuit in a case involving imports of Mexican ceramic tile, ruled that, absent an injury determination by the ITC, the Department may not assess countervailing duties under 19 U.S.C. 1303(a)(1) (1988, repealed 1994) on entries of dutiable merchandise after April 23, 1985, the date Mexico became ''a country under the Agreement.'' *Ceramica Regiomontana* v. *U.S.*, Court No. 95–1026 (Fed. Cir., Sept. 6, 1995) (*Ceramica*).

Argentina attained the status of ''a country under the Agreement'' on September 20, 1991. Therefore, in consideration of the *Ceramica* decision, the Department, on April 2, 1996, initiated changed circumstances administrative reviews of the countervailing duty orders on Leather, Wool, OCTG, and Cold-Rolled Carbon Steel Flat-Rolled Products (Cold-Rolled Steel) from Argentina, which were in effect when Argentina became a country under the Agreement. *See Initiation of Changed Circumstances Countervailing Duty Administrative Reviews: Leather from Argentina, Wool from Argentina, Oil Country Tubular Goods from Argentina, and Cold Rolled Carbon Steel Flat Products from Argentina* (*Changed Circumstances Reviews*), 61 FR 14553 (April 2, 1996). These reviews focused on the legal effect, if any, of Argentina's status as a ''country under the Agreement,'' and whether the Department has the authority to assess countervailing duties on these orders. Because we had ongoing administrative reviews of the orders on OCTG and Cold-Rolled Steel that covered review periods on or after September 20, 1991, we had to determine whether the Department had the authority to assess countervailing duties on unliquidated entries of subject merchandise occurring on or after September 20, 1991, when Argentina became a ''country under the Agreement'' and before January 1, 1995, that date that Argentina became a ''subsidies Agreement country'' within the meaning of section 701(b) of the URAA.

On April 29, 1997, the Department determined that it lacked the authority to assess countervailing duties on entries of OCTG and Cold-Rolled Steel from Argentina made on or after September 20, 1991 and before January 1, 1995 (62 FR 24639; May 6, 1997). As a result we terminated the pending administrative reviews of the countervailing duty order on OCTG covering 1992, 1993, and 1994, as well as the pending administrative reviews of the countervailing duty order on Cold-Rolled Steel covering 1992 and 1993.

However, because the 1991 review covers a period before Argentina became a ''country under the Agreement,'' we must continue the 1991 administrative review to determine the amount of countervailing duties to be assessed on entries made between January 1, 1991 and September 19, 1991 (*i.e.*, up to the date Argentina became ''a country under the Agreement.'') Pursuant to the

Ceramica decision, entries of subject merchandise made on or after September 20, 1991 will be liquidated without regard to countervailing duties.

Applicable Statute

The Department is conducting this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute are in reference to the provisions as they existed on December 31, 1994.

Scope of Review

Imports covered by this review are shipments of Argentine oil country tubular goods. These products include finished and unfinished oil country tubular goods, which are hollow steel products of circular cross section intended for use in the drilling of oil or gas, and oil well casing, tubing and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or proprietary specifications. During the review period this merchandise was classifiable under item numbers 7304.20.20, 7304.20.40, 7304.20.50, 7304.20.60, 7304.20.70, 7304.20.80, 7304.39.00, 7304.51.50, 7304.59.60, 7304.59.80, 7304.90.70, 7305.20.40, 7305.20.60, 7305.20.80, 7305.31.40, 7305.31.60, 7305.39.10, 7305.39.50, 7305.90.10, 7305.90.50, 7306.20.20, 7306.20.30, 7306.20.40, 7306.20.60, 7306.20.80, 7306.30.50, 7306.50.50, 7306.60.70, and 7306.90.10 of the Harmonized Tariff Schedule (HTS). The HTS numbers are provided for convenience and Customs purposes. The written description of the scope remains dispositive.

Verification

As provided in section 776 of the Act, we verified information submitted by the Government of Argentina (GOA) and Siderca. We followed standard verification procedures, including meeting with government and company officials, examining relevant accounting and financial records and other original source documents. Our verification results are outlined in the public versions of the verification reports which are on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

Calculation Methodology for Assessment and Cash Deposit Purposes

Because Siderca accounts for virtually all exports of OCTG from Argentina during the period of review, the subsidy rate calculated for Siderca constitutes the country-wide rate.

Analysis of Programs

I. Programs Conferring Subsidies

A. Programs Previously Determined to Confer Subsidies

1. Government Counterguarantees

In 1986, Siderca began to receive funds from an Inter-American Development Bank (IADB) loan. This loan was guaranteed by the Banco Nacional de Desarollo (BANADE). In order to satisfy the IADB's lending requirements, the GOA provided a counterguarantee to BANADE's guarantee, which assured the IADB that the government would reimburse BANADE if Siderca defaulted on the loan and BANADE was required to make the payments. This counterguarantee was provided under the authority of Law 16,432/61 (Article 48), which allows the GOA to back loans to public and private enterprises if the monies will be used for projects the government deems fundamental for the economic development of the country. Because Siderca was able to acquire the counterguarantee, it was able to negotiate a 50 percent reduction in the rate charged by BANADE for the primary loan guarantee. This program was found countervailable in the 1989 administrative review of this order *(see Oil Country Tubular Goods From Argentina, Final Results of Countervailing Duty Administrative Review,* 56 FR 64493 (December 10, 1991) *(1989 OCTG Review)*). No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this program's countervailability.

As we stated in the *1989 OCTG Review,* the Department does not consider loans provided by international lending institutions, such as the IADB, to be countervailable under the U.S. countervailing duty law. However, we do consider that government action taken in connection with such loans is within the purview of the U.S. countervailing duty law. By not charging Siderca a fee for the counterguarantee, despite the fact that a fee is usually charged for a loan guarantee in Argentina, the government took an action that was inconsistent with commercial considerations. The Department further stated that the benefit from the counterguarantee is not the difference between the interest rate on the IADB loan and a commercial benchmark loan because this type of methodology would be tantamount to countervailing the IADB loan itself. We concluded in the *1989 OCTG Review* that the commercial alternative to Siderca would have been to pay the full amount for the guarantee fee charged by BANADE.

To calculate the benefit under this program, we compared the amount of fees Siderca would have paid for the BANADE loan guarantee absent the GOA counterguarantee and subtracted from the amount the actual amount of fees it did pay during the period of review. We then divided the resultant amount by Siderca's total sales during 1991. On this basis, we preliminarily determine the *ad valorem* subsidy to be 0.05 percent for the period of review.

2. Pre-shipment Export Financing

The Central Bank of Argentina provided pre-export financing through a program known as OPRAC–1, as amended by Central Bank Resolution A–1205. Under Resolution A–1205, OPRAC pre-export financing provided 180-day loans with an additional 60 days for repayment. Under this program, two types of pre-shipment export financing were available: ''internal lines'' from Central Bank resources and ''external lines'' from foreign banks. For ''external lines'' pre-shipment export financing, the Central Bank provided a portion of the interest rate, usually three percent, to the private banks as an incentive to extend these lines of credit to exporters. Exporters negotiated the terms of this financing directly with the commercial banks and the Central Bank would then provide the three percent incentive payment to the bank. We found pre-shipment export financing under OPRAC–1 countervailing in the 1987 administrative review of *Certain Cold-Rolled Carbon Steel Flat-Rolled Products From Argentina; Final Results of Countervailing Duty Administrative Review,* 56 FR 28527 (June 21, 1991) *(1987 Cold-Rolled Steel Review).* No new information or evidence of changed circumstances has been submitted to warrant reconsideration of this program's countervailability.

Under this program, Siderca received pre-shipment export loans under ''external lines'' of financing provided by commercial banks. Under this financing program, commercial banks could reduce their lending rates to exporters and keep the three percent interest rebates, or the banks could maintain the commercial interest rates and pass on the rebate from the Central Bank to the exporter. Siderca received loans under this program from January 1, 1991 through March 8, 1991, when the OPRAC program was suspended under Central Bank Communication A–1807.

Siderca struck deals with the commercial banks stipulating that the intervening commercial bank would pass the three percent rebate to Siderca, while at the same time raising the nominal interest rate charged to Siderca for the pre-shipment loan. Siderca would receive the three percent rebate, in australes, several months after the term of the loan. We verified that Siderca received pre-shipment export financing tied to shipments to specific markets, including exports of OCTG to the United States. Therefore, to calculate the benefit under this program during period of review, we calculated the difference between the commercial interest rates charged by the commercial banks and the net interest rates paid by Siderca after taking into account the three percent interest rebates. We then took the interest savings received by Siderca on its pre-shipment export loans for OCTG exports to the United States and divided that amount by the company's export sales of OCTG to the United States. On this basis, we preliminarily determine the *ad valorem* subsidy to be 0.18 percent for this program during the period of review.

3. Rebate of Indirect Taxes (Reembolso/Reintegro)

The Reembolso program provides a cumulative tax rebate paid upon export and is calculated as a percentage of the f.o.b. invoice price of the exported merchandise. The Department will find that the entire amount of any such rebate is countervailable unless the following conditions are met: (1) The program operates for the purpose of rebating prior stage cumulative indirect taxes and/or import charges; (2) the government accurately ascertained the level of the rebate; and (3) the government reexamines its schedules periodically to reflect the amount of actual indirect taxes and/or import charges paid. In prior investigations and administrative reviews of the Argentina Reembolso program, the Department determined that these conditions have been met, and, as such, the entire amount of the rebate has not been countervailed (*see, e.g., Cold Rolled Carbon Steel Flat-Rolled Products from Argentina, Final Results of Countervailing Duty Administrative Review* (56 FR 28527; June 21, 1991); *Oil Country Tubular Goods from Argentina, Final results of Countervailing Duty Administrative Review* (56 FR 64493; December 10, 1991).

However, once a rebate program meets this threshold, the Department must still determine in each case whether there is an overrebate; that is, the Department must still analyze whether the rebate exceeds the total amount of indirect taxes and import duties borne by inputs that are physically incorporated into the exported product. If the rebate exceeds the amount of allowable indirect taxes and import duties on physically incorporated inputs, the Department will find a countervailable benefit equal to the difference between the Reembolso rebate rate and the allowable rate determined by the Department (*i.e.*, the overrebate).

To determine whether there was an overrebate during the review period, the Department requested the GOA to provide information on any changes to the Reembolso program for OCTG. We verified that the Reembolso program continue to be governed by Decree 1555/86, which modified the program and set precise guidelines to implement the refund of indirect taxes and import charges. This decree established three broad rebate levels covering all products and industry sectors. The rates for levels I, II, and III were 10 percent, 12.5 percent, and 15 percent respectively. The rebate rate for OCTG was at level II at 12.5 percent.

In April 1989, the GOA suspended cash payments of rebates under the Reembolso program. Pursuant to the Emergency Economic Law dated September 25, 1989 (Law 23,697), the suspension of cash payments was continued for an additional 180 days. Rebates accrued during the suspension period were paid in export credit bonds. On March 4, 1990, the entire program was suspended for 90 days by Decree 435/90. Decree 1930/90 suspended payments of the reembolso for an additional 12-month period. Decree 612/91 issued April 10, 1991, reinstated cash payments under the program, but reduced the rates of reimbursement by 33 percent for all products. Therefore, the rebate for OCTG was reduced from 12.5 to 8.3 percent.

In May 1991, Decree 1011/91 was issued. This decree changed the legal structure of the program. Decree 1011/91 changed the rebate system to cover only the reimbursements of indirect local taxes and does not cover import duties, except reimbursement of duties paid on imported products which are re-exported. Decree 1011/91 also set the reembolso rate as that in Decree 612/91. Therefore, during the period of review, rebates were suspended from January through April 10, 1991, and the rebate rate applicable to OCTG exports was 8.3 percent for the rest of the review period.

To determine whether there were overrebates under this program in 1991, we calculated the allowable tax incidence for the subject merchandise for that period. This calculation of the allowable tax incidence was based on a 1991 tax incidence study. We made adjustments in our calculation of the allowable tax incidence for items we determined not to be physically incorporated into the exported OCTG. We then compared this calculation of the allowable tax incidence to the Reembolso rebate of 8.3 percent received on OCTG exports. Based on this comparison, we found that the rebate of taxes did not exceed the total amount of allowable cumulative indirect taxes and/or import charges paid on physically incorporated inputs, and prior stage indirect taxes levied on the exported product at the final stage of production. Therefore, we preliminarily determine that there was no benefit from this program during the review period.

B. New Program Preliminarily Found to Confer Subsidies Preferential Electricity Tariff Rates

Until April 1991, the tariff rates for electricity were set by the government. On April 17, 1991, the GOA published Decree 634/91 which provided for the deregulation of the electricity industry in Argentina. This Decree created two market levels for electricity in Argentina, the wholesale market and the retail market. The wholesale market was comprised of the producers, generators, and distributors of electricity as well as the large individual consumers of electricity. Under Decree 634, the producers and generators would sell electricity through a central dispatch agency. The distributors would then purchase the electricity from this central dispatch agency for delivery to the individual consumer. In order to encourage competition within the wholesale market, a large individual consumer could negotiate a contract with any utility company within the country.

Although large consumers could negotiate contracts for electricity in the wholesale market, the tariff rates charged to individual consumers in the retail market were still set by the government. However, the GOA also took steps to reduce tariff rates in the retail market. On March 27, 1991, the Ministry of Economy published Resolution 194/91 which set new reduced tariff rates for electricity in the retail market in Argentina. These rates applied to residential, commercial and industrial consumers in the retail market for electricity purchased from nationally-owned utility companies.

During the review period, Siderca's price for electricity was set by two different contracts. From January 1, 1991 through March 31, 1991, Siderca's electricity rates were set in a contract signed with Direccion de Energia de Buenos Aires (DEBA), a branch of the Ministry of Works and Public Utilities of the Province of Buenos Aires. After this contract was signed in 1990, DEBA was split into two entities, Empresa Social de Energia de Buenos Aires (ESEBA), which was responsible for providing electricity to the Province of Buenos Aires and for setting the tariff rates, and DEBA, which was responsible for approving ESEBA's tariff rates.

In April 1991, because of the amount of electricity consumed by Siderca, it qualified as a ''large consumer'' in the wholesale market under Decree 634/91. Therefore, Siderca was eligible to have its tariff rate for electricity determined by negotiations with utility companies. Siderca negotiated and signed an individual contract with ESEBA for the provision of electricity. The effective date of this contract was April 1, 1991. The rates set by the ESEBA contract applied for the rest of the period of review. Because Siderca's electricity rate during the period of review was not set by a published tariff schedule but by individual contracts signed with each utility company, we must determine whether the electricity rates paid by Siderca under the DEBA and ESEBA contracts were preferential.

Prior to the effective date of April 1, 1991 for the ESEBA contract, Siderca's price for electricity was determined by a contract which was signed between Siderca and DEBA. Under the DEBA contract, the price of 70 percent of Siderca's monthly electricity consumption was set by the published tariff rates, while the remaining portion was set by the price in the contract. This pricing scheme was provided by DEBA to other companies in the Province of Buenos Aires in contracts identical to the one signed with Siderca. The DEBA contract was signed on July 12, 1990, and remained in effect until March 31, 1991.

Although individually tailored company contracts with government-owned utility companies are, by definition, specific under section 771(5)(A) of the Act, we must examine the issue of specificity with respect to the DEBA contract because the DEBA contract did not provide an individually-tailored company-specific rate like the rate provided in the ESEBA contract. Instead, the DEBA contract provided the same electricity rate to all the companies which signed a contract identical to the one signed between Siderca and DEBA. Therefore, we must examine the group of companies which signed identical contracts to determine whether the DEBA contract is specific under section 771(5)(A) of the Act.

During our examination of the DEBA contracts at verification, we found that only a very small number of companies had a contract identical to the one signed between Siderca and DEBA (see verification report (public version) at page 17). Therefore, we preliminarily determine that the DEBA contract is specific under section 771(5)(A) of the Act. To determine whether the rates under the DEBA contract were preferential, we compared the rates of electricity in the DEBA contract to the rates in the published tariff schedule for large users. Based upon this comparison, we find that the rates in the DEBA contract are preferential. Therefore, we preliminarily determine that the electricity rates provided to Siderca under the DEBA contract are countervailable.

To calculate the benefit under this program, we calculated the difference between the price of electricity Siderca would have paid based on the published tariff schedule and the price of electricity the company actually paid under the DEBA contract. We then divided the difference by Siderca's total sales in 1991 and calculated an *ad valorem* subsidy rate of 0.26 percent for the period of review. We next had to examine whether the ESEBA contract was countervailable.

An individually tailored contract with a government-owned utility company is by definition specific under section 771(5)(A) of the Act; however, in order for the contract to be countervailable, the rates provided under the contract must be preferential. The preferentiality of individual electricity contracts was an issue in the *Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada,* 57 FR 30946 (July 13, 1992), and in the *Final Results of Changed Circumstances Administrative Reviews: Pure Magnesium and Alloy Magnesium from Canada*). *Magnesium from Canada* described the Department's approach to evaluating whether electricity is being provided on preferential terms.

The first step the Department takes in analyzing the potential preferential provision of electricity is to compare the price charged in the contract with the applicable rate on the utility company's non-specific rate schedule. If the amount of electricity purchased by the company is so great that the rate schedule is not applicable, the Department will examine whether the price charged in the contract is consistent with the utility company's standard pricing mechanism. If the rate charged is consistent with the utility company's standard pricing mechanism, and the company under investigation or review is, in all other respects, treated no differently than other industries which purchase comparable amounts of electricity, then there would be no apparent basis to find the contract preferential.

In *Magnesium from Canada,* the utility company's published tariff schedule did not provide rates for electricity consumers the size of Norsk Hydro Canada Inc. (NHCI), the respondent in that investigation. Therefore, in determining whether NHCI's contract was preferential, the Department had to examine the utility company's standard pricing mechanism. However, in the instant review, we do not need to examine the utility company's standard pricing mechanism because the published tariff rates are applicable to all large users regardless of the amount of electricity consumed by the individual large user. Therefore, we have analyzed the Siderca contract with ESEBA by comparing the price charged with an applicable tariff rate schedule.

As previously stated, Decree 634/91 started the deregulation of the electricity market in Argentina. Under this decree, large consumers, such as Siderca, were free to negotiate individual electricity contracts with any utility company in the country. While the GOA was allowing large consumers to negotiate contracts in the wholesale electricity market, the GOA also reduced the published tariff rates for electricity with the publication of the Ministry of Economy's Resolution 194/91. Resolution 194/91 set the tariff rates for all nationally-owned utility companies in the country. However, these new rates were not applicable to ESEBA because ESEBA was a provincially-owned utility company.

Although Resolution 194/91 for national tariff rates did not apply to ESEBA, these rates were available to Siderca because under Decree 634/91 it could sign a contract for electricity with any nationally-owned utility company in Argentina. Therefore, to determine whether the Siderca contract with ESEBA provided a preferential rate for electricity to Siderca, we compared the electricity rate provided in the ESEBA contract to the published tariff rates in Resolution 194/91 which were in effect during the same time as the ESEBA contract. Based on this comparison, we find that the rates in the ESEBA contract are equal to or higher than the published national tariff rates in Resolution 194/91. Therefore, we preliminarily determine that the contract Siderca signed with ESEBA did not provide electricity at preferential rates to Siderca and, thus, is not counterviable.

However, we note that this contract expired in 1992, and another contract between Siderca and ESEBA was subsequently negotiated and signed in September 1992, outside the period of review. Because the rates negotiated in the 1992 contract were lower than the rates in the contract in effect during 1991, we will have to reexamine this program in any subsequent administrative review of this order.

II. Program Preliminarily Found Not to Confer Subsidies

Preferential Natural Gas Tariffs

According to the GOA, at the end of 1990, Argentina was emerging from an extended period of hyperinflation. The GOA believed that deregulating and privatizing the large, state-owned utility companies would lead to price stability by introducing competition in the market. The beginning of this deregulation can be found with the passage of Decree 633. Also, within this context, the GOA entered into sectoral agreements with Argentine industries in order to secure commitments from industries that they would hold down prices charged to their customers in order to stabilize the inflation rate within the economy. In exchange for this commitment, the GOA committed itself to broad-based economic reforms, including the maintenance of stable energy prices.

In early 1991, the GOA began the first steps towards deregulating the natural gas market in Argentina. Until April 1991, the GOA set and regulated the tariff rates for natural gas in the country. Prices for natural gas could not deviate from those prices set by the Economy Minister. In April 1991, with the enactment of Decree 633, two separate markets for natural gas were created. The first market was the wholesale market which covered transactions between producers and distributors as well as between producers and large users of natural gas. The other market created by Decree 633 was the retail market which covered sales to residential and commercial consumers. Under Decree 633, companies in the wholesale market were permitted to engage in negotiations and to enter into individual contracts for natural gas.

For the period January 1, 1991 through March 31, 1991, the rates for natural gas paid by Siderca were set through the issuance of tariff schedules. Gas del Estado (GdE) was the sole provider of natural gas through this period. After March 31, 1991, Siderca no longer had its natural gas rates set by tariff resolutions. With the deregulation of the natural gas market under Decree 633, large consumers in the wholesale market could negotiate contracts for natural gas. Siderca, being one of the largest consumers of natural gas in the country, was one of the first industrial consumers to negotiate a separate contract for natural gas.

Because Siderca was a large consumer for natural gas, it qualified as a consumer in the wholesale market. On June 28, 1991, Siderca entered into a requirements contract with GdE, which was made retroactive to April 1, 1991, and remained in effect throughout 1991, the period of review. Under the contract arrangement, Siderca would purchase natural as from a privately-owned company, TECPETROL, and then Siderca would pay GdE for transportation of the natural gas from TECPETROL. Under the contract, there were two different rates for transportation, one rate for the winter and another rate for the rest of the year. If TECPETROL could not supply enough gas to meet all of Siderca's requirements, then, under GdE contract, Siderca would purchase natural gas from GdE to make up the shortfall, at a specified contract rate plus a commission.

The GdE contract provided rates for both the transportation of natural gas and for the supply of natural gas. Therefore, we must determine whether a countervailable benefit was provided to Siderca either in the form of preferential transportation rates or preferential natural gas rates. In order for a non-export program to be countervailable it must meet both the test for specificity and preferentiality. Specificity requires that the program be limited to an enterprise or industry or group of enterprises or industries under section 771(5)(b) of the Act. Because an individually negotiated contract price with a government-owned utility is, by definition, specific to the individual negotiating the contract, we must examine whether the transportation and tariff rate for natural gas provided to Siderca under the GdE contract are preferential to determine whether this program is countervailable. If these rates are not preferential, then the program is not countervailable. If the rates are preferential, then the program is countervailable.

To determine whether a government has provided a good or service, such as natural gas, at preferential rates, the Department generally measures that rate against a nonspecific tariff rate against a nonspecific tariff rate charged to other users of that good or service by the government, or to rates charged for an identical good or service from a private provider. However, in prior cases involving the provision of natural gas or electricity, we have stated that the tariff schedule rate is not necessarily the appropriate benchmark to determine whether a contracted rate is preferential. *See, e.g., Magnesium from Canada.* We stated in *Magnesium from Canada* that if the amount of electricity purchased by a company is so great that the rate schedule is not applicable, we will examine whether the rate charged in a contract is preferential by determining whether the rate is consistent with the utility company's standard pricing mechanism. If the rate charged in a contract is consistent with the standard pricing mechanism used by the utility company to set its tariff rates, then the contract rate is not preferential. Therefore, under the practice set forth in *Magnesium from Canada,* if the contract price is set in a manner consistent with the utility company's standard pricing mechanism for setting tariffs, then the contract rate does not provide a countervailable benefit.

Two years prior to our verification, GdE was privatized. In 1992, two private transporters and eight private distributors purchased the assets of GdE. After its privatization, the cost structure studies used by GdE to propose its tariff rate schedules were destroyed or thrown away. Therefore, we are unable to determine whether GdE used its standard pricing methodology to negotiate its rates and tariffs with companies in the wholesale market. However, the Department may determine whether the provision of a good or service is preferential by comparing the price charged by the government to a price charged by private sellers to buyers in the market for an identical good or service.

Therefore, in order to determine whether the price charged to Siderca for natural gas under the GdE contract is preferential, we compared that price to the price of natural gas charged to Siderca from private companies. In 1991, after the enactment of Decree 633, Siderca also entered into a contract to purchase natural gas from a private producer, TECPETROL. We compared the price of natural gas charged to Siderca from TECPETROL to the price of natural gas charged to Siderca by GdE. Based on this comparison, we determine that the price of natural gas charged by GdE was not preferential and, thus, not countervailable during the review period.

We next had to determine whether the transportation rates for natural gas specified in the GdE contract were preferential. During 1991, there were no private transporters of natural gas in Argentina. GdE was the sole transporter of natural gas in the country. In addition, there were no separate transportation rates for natural gas in the country until after 1992. During our review period, the published tariff rates for natural gas included the cost for the natural gas, its transportation, and its distribution.

Therefore, because there were no separate rates for transportation in Argentina during the period of review, to determine whether the transportation rates for natural gas charged to Siderca under the GdE contract were preferential, we compared those prices to the transportation cost study conducted by an independent consulting firm, Stone & Webster. Stone & Webster were technical advisors to the GOA in the privatization of GdE.

This Stone & Webster cost study detailed the cost of transporting natural gas from the gas fields to Siderca's plant. We compared the transportation cost detailed in the Stone & Webster study to the price negotiated in the GdE contract. Based upon this comparison, we determined that the price charged to Siderca for transportation of natural gas under the GdE contract was much higher than the gas company's costs and provided a large profit for GdE. Therefore, we preliminarily determine that the transportation rates charged to Siderca in the GdE contract were not preferential, and thus not countervailable, during the review period.

III. Programs Preliminary Found Not To Be Used

We examined the following programs and preliminary find that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under these programs during the period of review:

- Medium- and Long-Term Loans
- Capital Grants
- Income and Capital Tax Exemptions
- Government Trade Promotion Programs
- Exemption from Stamp Taxes Under Decree 186/74
- Incentives for Trade (Stamp Tax Exemption Under Decree 716)
- Incentive for Export
- Export Financing Under OPRAC 1, Circular RF–21
- Pre-Financing of Exports Under Circular RF–153
- Loan Guarantees
- Post-Export Financing Under OPRAC 1–9
- Debt Forgiveness
- Tax Deduction Under Decree 173/85

IV. Program Preliminarily Found Not to Exist

Tax Concessions for the Steel Industry

Petitioners alleged that under Paragraph 8 of the April 11, 1991 Steel Agreement between the GOA and Argentine steel producers that the GOA provides the steel industry with tax concessions. According to the response of the GOA, Paragraph 8 of the Steel Agreement does not provide tax concessions to the steel industry but merely states that the industry's Reembolso level will be studied taking into account the tax incidence of steel producers. For information on the Reembolso/Reintegro program, see the program ''Rebate of Indirect Taxes,'' above. Therefore, we preliminarily determine that there were no new tax concessions provided to the steel industry under the Steel Agreement.

Preliminary Results of Review

For the period January 1, 1991 through December 31, 1991, we preliminarily determine the net subsidy to be 0.49 percent *ad valorem*.

If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service to assess countervailing duties of 0.49 percent *ad valorem* on entries of the subject merchandise covered by this administrative review for the period January 1, 1991 through September 19, 1991, and to liquidate all entries made on or after September 20, 1991 through December 31, 1991, without regard to countervailing duties.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under section 355.38(c), are due.

The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

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 355.22.

Dated: June 4, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–15607 Filed 6–12–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF EDUCATION

National Advisory Council on Indian Education

AGENCY: National Advisory Council on Indian Education, ED.

ACTION: Notice of meeting cancellation.

SUMMARY: This notice announces the cancellation of a meeting of the National Advisory Council on Indian Education that was published in the **Federal Register,** Vol. 62, No. 102, page 28841, Wednesday, May 28, 1997. This meeting has been canceled due to the lack of obtaining a quorum for the meeting, which was scheduled for June 11, 1997, 8:30 a.m. to 4:30 p.m.

DATES: JUNE 6, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. David Beaulieu, Director, Office of Indian Education, (202) 260-1516; FAX (202) 260-7779.

David Beaulieu,

Director, Office of Indian Education.

[FR Doc. 97–15469 Filed 6–12–97:8:45 am]

BILLING CODE–4000–01–M

DEPARTMENT OF EDUCATION

National Educational Research Policy and Priorities Board; Meeting

AGENCY: National Educational Research Policy and Priorities Board; Education.

ACTION: Notice of committee meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Program Committee of the National Educational Research Policy and Priorities Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is

intended to notify the general public of their opportunity to attend the meeting.

DATE: June 25, 1997.

TIME: 8:30 a.m. to 2 p.m.

LOCATION: Southern Regional Education Board, 592 Tenth Street, NW., Atlanta, GA 30318–5790 (Room to be posted).

FOR FURTHER INFORMATION CONTACT: Thelma Leenhouts, Designated Federal Official, National Educational Research Policy and Priorities Board, Washington, D.C. 20208–7564, Tel.: (202) 219–2065; fax: (202) 219–1528; e-mail:Thelma __Leenhouts@ed.gov.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by Section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994. The Board works collaboratively with the Assistant Secretary for the Office of Educational Research and Improvement to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office. The Committee will discuss allocation of its budget and implementation of the Board's work plan.

A final agenda will be available from the Board office on June 18, 1997. Records are kept of all Board proceedings and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, Suite 100, 80 F St., NW., Washington, D.C. 20208–7564.

Dated: June 9, 1997.

Eve M. Bither,

Executive Director.

[FR Doc. 97–15488 Filed 6–12–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Notice of Solicitation for the Development and Implementation of International Projects That Reduce, Avoid, or Sequester Greenhouse Gas Emissions for Submission Under the U.S. Initiative on Joint Implementation Program

AGENCY: Chicago Operations Office, Office of Utility Technologies, DOE.

ACTION: Notice of solicitation availability.

SUMMARY: The Department of Energy (DOE) announces its interest in receiving applications for federal assistance for the development and implementation of international projects that reduce, avoid, or sequester greenhouse gas emissions in developing countries and countries with economies in transition under the U.S. Initiative on Joint Implementation (USIJI) Program. As part of the U.S. Climate Change Action Plan launched in 1993, the USIJI is a pilot program encouraging partnerships between businesses and non-governmental organizations in the United States and those in developing countries and countries with economies in transition.

DATES AND ADDRESSES: The complete solicitation document will be available on or about June 18, 1997 on the Internet by accessing the DOE Chicago Internet Home Page at http://www.ch.doe.gov/business/ACQ.html under the heading ''Current Acquisition Activities'' Solicitation No. DE–PS02–97EE35024. Applications are due no later than 3:00 p.m. Central Daylight Time (CDT), July 18, 1997. Any amendments to the solicitation will be posted on the Internet. Please note that users are not alerted when the solicitation is issued on the Internet or when amendments are posted to the Internet. Prospective applicants are therefore advised to check the above Internet address on a daily basis. This office will provide a printed copy of the solicitation and its amendments to any firm unable to access the solicitation on the Internet upon request. Awards are anticipated by September 15, 1997. Completed applications referencing Solicitation No. DE–PS02–97EE35024 must be submitted to the U. S. Department of Energy, Chicago Operations Office, Attn: Mary Lou Zambrano, Bldg. 201, Rm. 3D–24, 9800 South Cass Avenue, Argonne, IL 60439–4899.

SUPPLEMENTARY INFORMATION: The focus and objectives of these grants are consistent with the goals of the USIJI program which are: to promote technology cooperation with, and sustainable development in, developing countries and countries with economies in transition; test and evaluate methods to measure, track, and verify emissions reductions, costs and benefits; encourage private sector investment and innovation in developing and disseminating technologies that reduce or sequester greenhouse gas emissions; and establish an empirical base for the formulation of international criteria for joint implementation. DOE anticipates that approximately $250,000 will be available for funding and that five (5) to ten (10) projects will be selected for funding at approximately $25,000—$50,000 for each project awarded. The period of performance is expected to be twelve (12) months. These federal grant funds are intended to provide assistance for feasibility analysis; USIJI proposal development; calculation of baselines and greenhouse gas benefits; development of monitoring and verification systems; and travel costs associated with USIJI proposal development (i.e., host country acceptance, etc.).

Any non-profit or for-profit organization, or other non-federal agency or entity, is eligible to apply. DOE National Laboratories are not eligible to respond directly to this solicitation nor may they participate as a subcontractor under any proposal.

FOR FURTHER INFORMATION CONTACT: Mary Lou Zambrano, Acquisition and Assistance Group, Chicago Operations Office, 9800 South Cass Avenue, Argonne, Illinois 60439; Telephone No. (630) 252–2077, Fax No. (630) 252–5045, or by e-mail at marylou.zambrano@ch.doe.gov

Issued in Chicago, Illinois, on June 5, 1997.

John D. Greenwood,

Acquisition and Assistance Group Manager.

[FR Doc. 97–15548 Filed 6–12–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–90–001 and RP97–99–002]

Algonquin LNG, Inc.; Notice of Compliance Filing

June 9, 1997.

Take notice that on June 5, Algonquin LNG, Inc. (ALNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, tariff sheets listed on Appendix to the filing, to be effective July 1, 1997 and a pro forma tariff sheet included in the Appendix C to the filing, to be effective November 1, 1997.

ALNG asserts that the purpose of this filing is to comply with the Commission's orders in Docket No. RP97–90–000 and RP97–99–000, issued on December 20, 1996 and March 20, 1997, respectively. ALNG states that the two orders had granted ALNG an extension of time to file Order No. 587, Gas Industry Standards Board (GISB) compliance tariff sheets and the compliance with the Commission's Regulation, Section 154.107(b), which requires that rates be ''stated in cents or dollars per thermal unit.'' In both orders the extension of time was granted until 30 days after the Commission's action in ALNG's certificate application in Docket

No. CP96–517–000. ALNG states that the Commission issued its order in Docket No. CP96–517–000 on May 6, 1997.

ALNG states that copies of this filing were served on firm customers of ALNG and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15476 Filed 6–12–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–153–003]

Granite State Gas Transmission Inc.; Notice of Compliance Tariff Filing

June 9, 1997.

Take notice that on June 5, 1997, Granite State Gas Transmission, Inc. (Granite State) tendered for filing with the Commission the revised tariff sheets listed below in its FERC Gas Tariff, Third Revised Volume No. 1, for effectiveness on June 1, 1997:

Second Revised Sheet No. 215
Second Revised Sheet No. 289

According to Granite State, the revised tariff sheets are submitted in compliance with a Letter Order issued May 20, 1997, by the Director of the Office of Pipeline Regulation in this proceeding relating to tariff changes and amendments to comply with the principles and standards for critical business practices that have been issued by the Gas Industry Standards Board (GISB) and adopted by the Commission in Order Nos. 587 and 587–B.

Granite State further states that copies of its filing have been served on its firm and interruptible customers, and on the regulatory agencies of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such 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. Copies of Granite State's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15479 Filed 6–12–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–142–004]

K N Interstate Gas Transmission Co.; Notice of Tariff Filing

June 9, 1997.

Take notice that on June 5, 1997 K N Interstate Gas Transmission Co. (KNI) tendered for filing the revised tariff sheets listed on Appendix A to the filing, to be effective June 1, 1997.

KNI states that these tariff sheets are being filed to comply with the Commission's order in Docket Nos. RP97–142–001 and RP97–142–002, issued May 20, 1997.

KNI states that copies of the filing were served upon KNI's jurisdictional customers, interested public bodies, and all parties to the proceedings.

Any person desiring to protest with reference to this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15478 Filed 6–12–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–393–004]

Koch Gateway Pipeline Company; Notice of Compliance Filing

June 9, 1997.

Take notice that on June 5, 1997, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet, to become effective May 21, 1997. Koch asserts that the purpose of this filing is to comply with the Commission's order issued May 21, 1997, in Docket Nos. RP96–393–002 and RP96–393–003.

Substitute First Revised Sheet No. 2708

Koch is filing the above-referenced sheet in order to clarify that Koch is not required to refund Unauthorized Gas penalties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed as provided by Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15473 Filed 6–12–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–19–006]

Mojave Pipeline Company; Notice of Compliance Filing

June 9, 1997.

Take notice that on June 5, 1997, Mojave Pipeline Company (Mojave) tendered for filing and acceptance, pursuant to Subpart C of 154 of the Commission's Regulations Under the Natural Gas Act and in compliance with the Commission's letter order dated May 21, 1997 at Docket No. RP97–19–004, the following tariff sheets to its FERC Gas Tariff.

First Revised Volume No. 1

Sub Second Revised Sheet No. 111
Second Revised Sheet No. 134
Second Revised Sheet No. 247
Fist Revised Sheet Nos. 248–249
Original Sheet Nos. 250–260

Mojave states that the tariff sheets are being tendered to implement a pro forma Trading Partner Agreement for the electronic exchange of information pursuant to the Commission's directive. Additionally, Mojave included the currently effective Order of Discounts provision as required by the May 21, 1997 order. The tendered tariff sheets are proposed to become effective June 1 and July 5, 1997.

Mojave states that copies of the filing were served upon all parties of record in this proceeding, all interstate pipeline system customers and affected state regulatory commissions, in accordance with the requirements of Section 385.2010 of the Commission's Rules of Practice and Procedure.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 97–15474 Filed 6–12–97; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–372–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

June 9, 1997.

Take notice that on May 29, 1997 Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that the filing revises the current GSR–RA surcharge which is designed to recover price differentials associated with unassigned Reverse Auction (RA) Contracts and applicable carrying charges. Therefore, Northern has filed the Thirty Fifth Revised Sheet No.'s 50 and 51 to revised the GSR–RA surcharge, effective July 1, 1997.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such petitions or protests must be field in accordance with Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 97–15481 Filed 6–12–97; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–387–000]

OkTex Pipeline Company; Notice of Petition of OkTex Pipeline Company for Waiver of or Exemption From Certain Order Nos. 587, 587–B and 587–C Requirements

June 9, 1997.

Take notice that on June 5, 1997, OkTex Pipeline Company (OkTex), filed a petition pursuant to Rule 207 of the Commission's Rules of Practice and Procedure for a waiver of or exemption from the requirements concerning compliance with the electronic bulletin board, Internet server model and Internet web browser model and the capability to perform Electronic Data Interchange (EDI) transactions in Order Nos. 587, 587–B and 587–C, all as more fully set forth in the petition of file with the Commission and open to public inspection.

OkTex states that the establishment of an electronic bulletin board and compliance with the Internet server model and web browser model and the ability to perform EDI transactions is not necessary on the OkTex system in order to achieve the Commission's goals. OkTex states that the incremental expense of compliance with the Internet server model and web browser model and the ability to perform EDI transactions is significant to OkTex, and the benefits to OkTex's customers are nonexistent given the nature of the OkTex system.

Any person desiring to be heard or to protest this petition should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 16, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 97–15483 Filed 6–12–97; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–131–003]

Overthrust Pipeline Company; Notice of Tariff Filing

June 9, 1997.

Take notice that on June 5, 1997, Overthrust Pipeline Company (Overthrust) tendered for filing in compliance with the Commission's May 21, 1997, Order on Compliance Filing, and acceptance, to be effective June 1, 1997, proposed revised tariff sheets to First Revised Volume No. 1–A of its FERC Gas Tariff. The below-listed tariff sheets comply with the directives of the May 21 order.

Proposed Revised Tariff Sheets

Substitute Original Sheet Nos. 34A, 37A, 67A and 67B
Substitute First Revised Sheet No. 36
Substitute Second Revised Sheet Nos. 34, 37 and 67
Substitute Fourth Revised Sheet No. 49

Overthrust states that it has revised Section 1 (Definitions), Section 4 (Electronic Bulletin Board (EBB)), Section 8 (Capacity Release and

Assignment), and Section 15 (Scheduling of Gas Receipts and Deliveries), as required by the Commission.

Overthrust states further that it will (1) adopt the Gas Industry Standards Board Model Trading Partner Agreement reflecting Internet standards when approved by the Commission and (2) receive and process any Sender's Option data elements that the sender chooses to submit.

Overthrust requests waiver of 18 CFR 154.207 so that the tendered tariff sheets may become effective June 1, 1997, as proposed.

Overthrust states that a copy of this filing has been served upon its customers and the Wyoming Public Service Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15477 Filed 6–12–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–224–005]

Sea Robin Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

June 9, 1997.

Take notice that on June 4, 1997, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised Tariff sheets in compliance with the Commission's Order No. 587 and the Commission's May 20, 1997 order in this docket, to become effective June 1, 1997.

First Substitute Fifth Revised Sheet No. 7
First Substitute Second Revised Sheet No. 95

On July 17, 1996, the Commission issued Order No. 587 in Docket No. RM96–1–000 which revised the Commission's regulations governing interstate natural gas pipelines to require such pipelines to follow certain standardized business practices issued by the Gas Industry Standards Board (GISB) and adopted by the Commission in said Order. 18 CFR 284.10(b). On May 20, 1997, the Commission issued an order in this docket in response to Sea Robin's March 28, 1997, filing to comply with Order No. 587. The order required Sea Robin to revise and submit a compliance filing to be effective June 1, 1997. Sea Robin was directed to include in its tariff filing a general incorporation of GISB Standards 2.3.16–2.3.20 and a Model Business Trading Agreement for EDI users.

The Commission also directed Sea Robin to include on its rate sheets the volumetric capacity release rate and the fuel and company use rate. In conjunction with the compliance filing, Sea Robin requests a waiver of the Commission's Regulations to implement Version 1.1 of GISB Standard 5.3.22—the methodology for calculating the volumetric capacity release rate. Such version is proposed to be implemented November 1, 1997, as required by Commission Order No. 587–C, and the calculation in Version 1.1 is the methodology that Sea Robin has been using prior to the June 1, 1997, implementation of the GISB Standards.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedures. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15480 Filed 6–12–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–386–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

June 9, 1997.

Take notice that on June 4, 1997, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the revised tariff sheets listed in Appendix A to the filing. Tennessee requests an effective date of July 4, 1997 for the revised sheets.

Tennessee states that the purpose of the revised tariff sheets is to eliminate Demand Delivery Service (DDS) from its FERC Gas Tariff. Tennessee further state that good cause exists for elimination of DDS because no customers currently use the service; no new or existing customers could be eligible for the service; and it would be an administrative burden for Tennessee to maintain a service that no customer would or could utilize.

Tennessee states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC. 20426, in accordance with 18 CFR 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15482 Filed 6–12–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–54–005]

Trailblazer Pipeline Company; Notice of Compliance Filing

June 9, 1997.

Take notice that on June 4, 1997, Trailblazer Pipeline Company (Trailblazer) tendered for filing to be part of the its FERC Gas Tariff, Third Revised Volume No. 1, Original Sheet No. 203A, to be effective May 1, 1997.

Trailblazer states that Original Sheet No. 203A was filed in compliance with OPR Letter Order issued May 30, 1997 in Docket No. RP97–54–004 (Letter Order), which directed Trailblazer to repaginate Original Sheet No. 204 filed on May 2, 1997 in Docket No. RP94–54–004.

Trailblazer states that a copy of the filing has been served on its transportation customers, interested state commissions and all parties set out on the official service list at Docket Nos. RP97–54–000, et al.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15475 Filed 6–12–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP93–541–008]

Young Gas Storage Company, Ltd.; Notice of Petition to Amend

June 9, 1997.

Take notice that on May 23, 1997, Young Gas Storage Company, Ltd. (Young), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP93–541–008, a petition to amend the authorizations issued on June 22, 1994 and October 5, 1995 in Docket Nos. CP93–541–000 *et al.* pursuant to Section 7(c) of the Natural Gas Act (NGA), and Part 157 of the Federal Energy Regulatory Commission's (Commission) regulations, to drill and operate new injection/withdrawal and observation wells, convert one injection/withdrawal well to an observation well and make minor modifications to the storage gathering system, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Young states that upon further study and data gained in the development of the storage field, certain changes to well requirements are needed to provide for the continued development of the storage field so that service may be provided at certificated levels. Specifically, Young seeks authorization to: (i) Drill and operate two injection/withdrawal wells, well nos. 38 and 39, and one observation well, well no. 40; (ii) construct and operate a total of about 3,100 feet of 6-inch diameter pipeline to connect well nos. 38 and 39 to the storage gathering system; (iii) convert well no. 25 to an observation well; and (iv) make minor modifications to the storage gathering system. Young avers that the modifications proposed herein will enable Young to meet its certificated withdrawal level of 170 MMcf per day for the 1997–1998 heating season.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 30, 1997, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the Young to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15470 Filed 6–12–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–193–000]

Transcontinental Gas Pipe Line Corp., Notice of Availability of the Environmental Assessment for the Proposed Maiden Lateral Looping Project

June 9, 1997.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Transcontinental Gas Pipe Line Corporation (Transco) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the natural gas expansion facilities including:

- About 17.77 miles of 16-inch-diameter pipeline loop on Transcos existing 10-inch diameter Maiden Delivery Lateral in Lincoln and Catawba Counties, North Carolina; and
- The expansion of Transcos existing Lowesville Meter Station, which is located at the interconnection of Transcos mainline and the Maiden Delivery Lateral.

Transco would transport an additional 38,000 dekatherms of natural gas per day to Piedmont Natural Gas Company.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 1–A, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state, and local agencies, public interest groups, interested individuals, newspapers, libraries, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date listed below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Reference Docket No.,

C

97–193–000.

- Send two copies of your comments to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.1.
- Mail your comments so they will be received in Washington, DC on or before July 10, 1997.

Comment will be considered by the Commission but will not serve to make a commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commissions Rules of Practice and Procedures (18 CFR 385.214).

The date for filing timely motions to intervene has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15471 Filed 6–12–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Petitions for Declaratory Orders

June 9, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Declaratory Orders.

b. *Docket Nos:* DI97–8–000/DI97–9–000.

c. *Date Filed:* May 27, 1997.

d. *Applicant:* Georgia-Pacific Corporation.

e. *Name of Project:* Forest City (P–2660) and West Branch (P–2618).

f. *Location:* East Branch of St. Croix River in Washington and Aroostook Counties; Maine; and West Branch of St. Croix River in Washington, Hancock, and Penobscot Counties, Maine, respectively.

g. *Filed Pursuant to:* Federal Power Act, 16 USC Section 791(a)—825(r).

h. *Applicant Contact:* Matthew D. Manahan, Pierce Atwood, One Monument Square, Portland, ME 04101, (207) 791–1100.

i. *FERC Contact:* Diane M. Murray, (202) 219–2682.

j. *Comment Date:* June 24, 1997.

k. *Description:* The existing Forest City Project (No. 2660) consists of all United States portions of the following project works:

(1) Forest City Dam, a 16-foot-high, 500-foot-long earth embankment dam containing a gated timber spillway structure 65 feet wide, with 3 gates and a fish passage facility; (2) a reservoir (East Grant Lake) with surface area of 16,070 acres at elevation 434.94 feet m.s.l. and storage capacity of 105,300 acre-feet; and (3) other appurtenances.

The existing West Branch Project (No. 2618) consists of:

(A) West Grant Lake development: (1) West Grant Lake Dam, earth embankment and gravel-filled timber crib structure, 485 feet long and 13 feet high, containing a gated spillway structure, 77 feet wide with 5 gates, and a fish passage facility 24 feet wide; (2) a reservoir with surface area of 23,825 acres at elevation 301.43 feet m.s.l. and storage capacity of 160,000 acre-feet; and other appurtenances.

(B) Sysladobsis Lake development: (1) Sysladobsis Lake Dam, an earth embankment structure, 250 feet long and 5.5 feet high, with a concrete cut-off wall and rock masonry downstream face, containing a gated spillway structure 23 feet wide with 2 gates, and a fish passage facility 7 feet wide; (2) a reservoir with surface area of 5,400 acres at elevation 305.62 feet m.s.l., and storage capacity of 25,000 acre-feet; and (3) other appurtenances.

The above-referenced reservoirs are located upstream of three generating facilities, Grand Falls, Woodland, and Milltown. These generating facilities do not require licensing by the Commission.[1] The issue raised in Georgia-Pacific Corporation's petition is whether the above-referenced reservoirs are required to be licensed under Section 23(b) of the Federal Power Act.

When a Petition for a Declaratory Order is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any constructure subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR

[1] *See* October 28, 1988, Commission orders (UL89–1–000 Grand Falls Hydro Project and UL89–2–000 Woodland Hydro Project), and June 7, 1990 letter—Milltown Project

''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15472 Filed 6–12–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5841–8]

Environmental Laboratory Advisory Board; Nominees, Meeting Date and Agenda

AGENCY: Environmental Protection Agency.

ACTION: Solicitation of nominees for membership and notice of open meeting.

SUMMARY: The Environmental Protection Agency (EPA) is soliciting nominees to serve on the Environmental Laboratory Advisory Board (ELAB). Nominees are being sought to fill vacancies in the following categories: environmental engineering associations or firms, Indian nations, third party assessors, academia, small laboratories (20 employees or less), and associations representing the laboratory community complying with EPA's Toxic Substances Control Act (TSCA) and Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Terms of service will commence on October 1, 1997 and terminate on July 30, 1999. Application forms must be completed, to provide information on experience, abilities, stakeholder interest, organizational description, and references. A copy of the application form can be obtained on the Internet (see address below).

The Agency will convene an open meeting of ELAB on July 28, 1997, from 9:00 am to 5:00 pm. This meeting immediately precedes the National Environmental Laboratory Accreditation Conference (NELAC) Third Annual Meeting and will be held in the Wyndham Anatole Hotel at 2201 Stemmons Freeway in Dallas, TX. Directions can be obtained from the hotel by calling 214–748–1200.

The agenda will include discussions of the fact findings of several subcommittees, i.e. the Good Laboratory Practices (GLP) Subcommittee; the Performance Based Methods Subcommittee; and the Proficiency Testing Subcommittee. Comments on the NELAC standards, ready for voting at the Third Annual Meeting, will be solicited. (Standards are scheduled to be posted on the electronic bulletin board on July 1, 1997. The Internet site address for the standards and the above mentioned ELAB nominee application is: http://ttnwww.rtpnc.epa.gov/html/nelac/nelac.htm#NL02.) In addition, Dr. Eldert C. Hartwig, NELAC Chair, will respond to a previous ELAB recommendation regarding the development of a plan for implementation of NELAC. Finally, results of communication with EPA's Environmental Monitoring Management Council will be presented.

The public is encouraged to attend. Time will be allotted for public comment. Written comments are encouraged and should be directed to Ms. Jeanne Mourrain; Designated Federal Officer; USEPA; NERL (MD–75); Research Triangle Park, NC 27711. If questions arise, please contact Ms. Mourrain at 919/541–1120, fax 919/541–4101, or E-mail mourrain.jeanne@epamail.epa.gov.

Dated: May 28, 1997.

Lawrence Weinstock,

Acting Director, Office of Radiation and Indoor Air.

[FR Doc. 97–15556 Filed 6–12–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–140258; FRL–5723–9]

Access to Confidential Business Information by Research Triangle Park Institute

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Research Triangle Institute (RTI), 3040 Cornwallis Road, Research Triangle Park, North Carolina, for access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than June 27, 1997.

FOR FURTHER INFORMATION CONTACT: Susan Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under contract number 68–W7–0018, contractor RTI, of 3040 Cornwallis Road, Research Triangle Park, NC, will assist the Office of Pollution Prevention and Toxic (OPPTS) in the analyses of cost and benefits of actual or potential EPA actions taken under the TSCA, including the Asbestos Hazard Emergency Response Act (AHERA) of 1986 and Title X of the Residential Lead-Bead Paint Hazard Reduction Act of 1992 (TSCA Title IV).

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W7–0018, RTI will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. RTI personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide RTI access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters, RTI's site located at 3040 Cornwallis Road, Research Triangle Park, NC.

RTI will be authorized access to TSCA CBI at its facility under the EPA *TSCA Confidential Business Information Security Manual*. Before access to TSCA CBI is authorized at RTI's site, EPA will approve RTI's security certification statements, perform the required inspection of its facilities, and ensure that the facilities are in compliance with the manual. Upon completing review of the CBI materials, RTI will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until September 30, 2001.

RTI personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: June 5, 1997.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution and Prevention and Toxics.

[FR Doc. 97–15558 Filed 6–12–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–140259; FRL–5724–1]

Access to Confidential Business Information by Science Applications International Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Science Applications International Corporation (SAIC), of Reston, Virginia, access to information which has been submitted to EPA under sections 4, 5, 8, and 12 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than June 27, 1997.

FOR FURTHER INFORMATION CONTACT: Susan Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under contract number 69–W6–0069, contractor SAIC, of 11251 Roger Bacon Drive, Reston, VA, will assist the Office of Pollution Prevention and Toxic (OPPTS) in the development of a guidance document, update the Premanufacture Notification Instructions Manual and manage the Prenotice Communication Database to include system enhancements.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 69–W6–0069, SAIC will require access to CBI submitted to EPA under sections 4, 5, 8 and 12 of TSCA to perform successfully the duties specified under the contract. SAIC personnel will be given access to information submitted to EPA under sections 4, 5, 8 and 12 of TSCA. Some of the information may be claimed or determined CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 8 and 12 of TSCA that EPA may provide SAIC access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters.

Clearance for access to TSCA CBI under this contract may continue until September 30, 1999.

SAIC personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: June 5, 1997.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution and Prevention and Toxics.

[FR Doc. 97–15559 Filed 6–12–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5481–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed June 02, 1997 Through June 06, 1997 Pursuant to 40 CFR 1506.9

EIS No. 970209, Draft EIS, BLM, CA, NV, Rangeland Health Standards and Guidelines for Livestock Grazing on Public Rangelands in California and Northwestern Nevada, CA and NV, Due: August 31, 1997, Contact: Jim Morrison (916) 979–2830.

EIS No. 970210, Draft EIS, BLM, CA, Soledad Mountain Open Pit Leap Leach Gold Mine Project, Construction and Operation, Plan-of-Operations Approval, Mojave, Kern County, CA, Due: July 28, 1997, Contact: Ahmed Mohsen (760) 384–5421.

EIS No. 970211, Draft Supplement, NOA, CA, Monterey Bay National Marine Sanctuary Management Plan, Updated Information, To Amend the Designation Document and Regulations to Allow Jade Collecting in the Sanctuary, San Mateo, Santa Cruz and Monterey Counties, CA, Due: July 28, 1997, Contact: Elizabeth Moore (301) 713–3141.

EIS No. 970212, Final EIS, AFS, PA, Electric Utility Rights-of-Way, A Substation, and A Radio Tower Site Vegetation Management Plan, Implementation, Allegheny National Forest, Warren, McKean, Forest and Elk Counties, PA, Due: July 14, 1997, Contact: Robert L. White (814) 723–5150.

EIS No. 970213, Draft EIS, AFS, ID, North Lochsa Face Landscape and Watershed Assessment Project, Implementation, Clearwater National Forest, Lochsa Ranger District, Idaho County, ID, Due: July 28, 1997, Contact: George Harbaugh (208) 926–4275.

EIS No. 970214, Draft EIS, FHW, CA, I–880/CA–92 Interchange Reconstruction, I–880 from Winton Avenue to Tennyson Road and CA–92 from Hesperian Boulevard to Santa Clara Street, Funding, City of Hayward, Alameda County, CA, Due: July 28, 1997, Contact: John Schultz (916) 498–5041.

EIS No. 970215, Final EIS, FRC, ND, SD, MN, MT, IA, IL, Northern Border Project, Natural Gas Transportation, Pipeline and Facilities Expansion and Construction, Permits and Right-of-Way Grant Issuance, ND, MT, SD, IA, MN and IL, Due: July 14, 1997, Contact: Paul McKee (202) 208–1088.

Amended Notices

EIS No. 960550, Draft EIS, AFS, MT, Beaverhead Forest Plan Riparian Amendment, Implementation, Beaverhead—Deerlodge National Forest, Beaverhead, Madison, Silver Bow, Deer Lodge and Gallatin Counties, MT, Due: June 25, 1997, Contact: Peri Suenram (406) 683–3967. Published FR 01–24–97—Review Period Extended.

EIS No. 970125, Draft EIS, FHW, MD, InterCounty Connector (ICC) Transportation Improvements, between I–270 Corridor near Rockville/Gaithersburg, Montgomery County and I–95 Corridor near Laurel in Prince George’s County, Funding, COE Section 404 Permit and Right-of-Way Permit, Montgomery and Prince George’s County, MD, Due: July 19, 1997, Contact: Renee Sigel (410) 962–4440. Published FR 06–13–97—Review Period extended.

Dated: June 10, 1997.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–15621 Filed 6–12–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5481–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 26, 1997 Through May 30, 1997 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 04, 1997 (62 FR 16154).

Draft EISs

ERP No. D–DOA–K36119–HI Rating EC2, Waimea-Paauilo Watershed Project, To Alleviate the Agricultural Water Shortage, Watershed Protection and Flood Prevention, COE Section 404 Permit. Hawaii County, HI.

Summary: EPA expressed environmental concern regarding the lack of an adequate discussion of purpose and need. EPA requested that the final document fully describe the purpose and need and evaluate an additional alternative which includes the Kauahi reservoir and irrigation distribution system, but omits the stockwater distribution system.

ERP No. D–DOE–L36109–00 Rating LO, Watershed Management Program Standards and Guidelines, Implementation, ID, NV, MT, OR, WA and WY.

Summary: Our abbreviated review has revealed no EPA concerns on this project.

ERP No. D–DOI–J28019–UT Rating EO2, Upalco Unit/Uinta Basin Replacement Project, Water Supply Management, Approvals and Permits Issuance, Duchesne and Uintah Counties, UT.

SUMMARY: EPA expressed environmental objection over the lack of an effective portrayal of the cumulative impacts to the aquatic resources, especially in light of past significant impacts to the aquatic systems of the project. EPA recommended that the Final EIS more clearly acknowledge the impacts of additional depletions on water quality. EPA also expressed environmental concern with the lack of detail concerning impact documentation and mitigation for the proposed wetland impacts and recommended that the Final EIS better document how and where the mitigation will occur.

ERP No. D–DOI–J39026–UT Rating EO2, Uintah Unit Replacement Project, Implementation, Central Utah Water Conservancy District, Approval of Several Permits, Duchesne and Uintah Counties, UT.

Summary: EPA expressed environmental objection over the lack of an effective portrayal of the cumulative impacts to the aquatic resources, especially in light of past significant impacts to the aquatic systems of the project. EPA recommended that the Final EIS more clearly acknowledge the impacts of additional depletions on water quality. EPA also expressed environmental concern with the lack of detail concerning impact documentation and mitigation for the proposed wetland impacts and recommended that the Final EIS better document how and where the mitigation will occur.

ERP No. D–UAF–K11080–CA Rating EC2, Programmatic EIS—McClellan Air Force Base (AFB) Disposal and Reuse Including Rezoning of the Main Base, Implementation, Federal Permits, Licenses or Entitlements, Sacramento County, CA.

Summary: EPA expressed environmental concerns with the project description and water and biological resources. In particular groundwater overdraft.

ERP No. D–USN–C11013–NY Rating EC2, Naval Weapons Industrial Reserve Plant Calverton Disposal and Reuse, Implementation, Towns of Riverhead and Brookhaven on Long Island, Suffolk County, NY.

Summary: EPA expressed environmental concerns related to wetlands, ground water, site contamination and remediation, endangered and threatened species, cultural resources and environmental justice.

ERP No. DS–NAS–A12040–00 Rating EC2, Cassini Spacecraft Exploration Mission to Explore the Planet Saturn and its Moons, Implementation.

Summary: EPA expressed environmental concerns that the radiological does estimates were presented in the document without sufficient information regarding key underlying assumptions used to make those estimates.

Final EISs

ERP No. F–COE–C35011–00 Newark Bay Confined Disposal Facility (NBCDF), Construction, Dredged Material Disposal Site, NY and NJ.

Summary: Although the Final EIS addressed many of the concerns expressed by EPA during the review of the Draft EIS, EPA remains concerned that the preferred alternative may not represent the least environmentally damaging practicable alternative. In addition, EPA expressed concern over the proposed cap monitoring program and requested that formal coordination with applicable federal and state agencies occur prior to issuance of a permit to address those concerns.

ERP No. F–FTA–G40143–TX North Central Corridor Light Rail Transit (LRT) Extension, Transportation Improvements, Funding, NPDES Permit and COE Section 404 Permit, Dallas and Collin Counties, TX.

Summary: Review of the Final EIS has been completed and the project found to be satisfactory. No formal comment letter was sent to the preparing agency.

ERP No. F–NOA–C90016–NJ Mullica River–Great Bay National Estuarine Research Reserve Establishment, Site Designation and Plan Implemention, Ocean, Atlantic and Burlington Counties, NJ.

Summary: EPA had no objections to the implementation of the proposed project. Based upon our review of the FEIS, our concerns have been adequately addressed.

ERP No. F–SCS–K36115–HI Upcountry Maui Watershed, Implementation, To Address Agricultural Water Shortage, COE Section 404 Permit, Makawao District, Island of Maui, Maui County, HI.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

Dated: June 10, 1997.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–15622 Filed 6–12–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00216; FRL–5722–4]

Notice of Availability of FY 1997 Lead Poisoning Prevention and Lead Hazard Awareness Public Education and Outreach Grant Funds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of funds availability.

SUMMARY: EPA is soliciting pre-application grant proposals under a new grant program for Lead Poisoning Prevention and Lead Hazard Awareness Public Education and Outreach. EPA anticipates that $450,000 will be available in Fiscal Year 1997, with individual grants awarded in the range of $20,000 to $60,000. The purpose of this program is to deliver public education and outreach products and services to increase lead-based paint hazard awareness and promote lead poisoning prevention to high-risk target audiences. For the purposes of this grant proposal application process, the term high-risk target audience refers to communities which are predominantly low-income, minority (e.g., African American, Asian Pacific American, Hispanic American, American Indian), located in large metropolitan areas, or communities which consist predominantly of older housing. The Agency chose to define high-risk target audience in this way because children living in these communities are especially at risk to elevated levels of lead exposure. These grant funds will be used for projects that deliver lead hazard awareness and poisoning prevention information to the parents, to care-takers or service providers (e.g., pediatricians) of children under 6 years of age, and to other vulnerable populations (e.g., pregnant women) in high-risk target audiences.

DATES: All pre-application grant proposals must be post-marked by July 28, 1997.

ADDRESSES: Submit pre-application proposals to: Megan Carroll, EPA Project Officer, Mail Code 7404, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Rm. E–543B, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551, e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Scope and Purpose of the FY 1997 Lead Poisoning Prevention and Lead Hazard Awareness Public Education and Outreach Grant Program

A. Existing EPA/Federal Lead Outreach Program

This new FY 1997 Lead Poisoning Prevention and Lead Hazard Awareness Public Education and Outreach Grant Program will build upon the Federal lead poisoning prevention outreach program already in place. The Federal program has recently relied on the National Lead Information Center hotlines (in English and Spanish) to respond to public inquiries, public service announcements on radio and television, transit ads, brochures, videos, pamphlets, individual EPA staff efforts, targeted outreach mailings, and cooperative efforts with states and other non-federal partners. With this new grant program, EPA hopes to build on these efforts by harnessing the expertise and the ability of other smaller organizations, such as local governments, community groups, and other specialized non-governmental organizations (NGOs) which operate on the local level, to deliver lead hazard awareness and poisoning prevention messages to targeted audiences at highest risk.

B. Recent NHANES Study

A recent study by the National Health and Nutrition Examination Survey (NHANES) indicates that children of urban, minority (e.g., African American, Asian Pacific American, Hispanic American, American Indian), or low-income families, or who live in older housing, continue to be most vulnerable to lead poisoning, and have elevated blood-lead levels. The February 21, 1997 Center for Disease Control's *Morbidity and Mortality Weekly Report* states that: ''Despite the recent and large declines in BLLs [blood lead levels], the risk for lead exposure remains disproportionately high for some groups, including children who are poor, non-Hispanic black, Mexican American, living in large metropolitan areas, or living in older housing.'' The report also states:

> The risk for lead exposure in children is primarily determined by environmental conditions of the child's residence. The most common source for lead exposure for children is lead-based paint that has deteriorated into paint chips and lead dust.* In the United States, approximately 83% of privately owned housing units and 86% of public housing units built before 1980 contain some lead-based paint.* In addition, soil and dust contaminated with residual lead fallout from vehicle exhaust contribute to exposure; concentrations of lead in soil and dust are highest in central urban areas.* For adults, the most common high-dose exposure sources are occupational.* Other exposure sources for adults and children can include lead dust brought into the home on clothing from workplaces, lead used for some hobbies, lead contained in some ''folk'' medicines and cosmetics, and lead in plumbing and in crystal and ceramic containers that leaches into water or food.*[1]

C. New Grant Projects Will Expand Outreach Efforts

EPA has successfully developed a variety of lead hazard awareness and poisoning prevention outreach materials and has the organization in place to respond to interested members of the public. With this new grant program, EPA will take the next steps to enable successful applicants (grantees) to deliver products directly to targeted audiences by funding public education and outreach projects that target high-risk communities who are especially at risk to elevated levels of lead exposure. EPA is not seeking proposals that will result in policy recommendations or national outreach strategies. Rather, EPA will fund projects that develop an ability to reach and benefit members of the public with appropriate outreach materials, with the expectation that successful projects may be replicated in other communities at a later time.

D. Outreach Materials

Applicants may develop their own outreach materials or use already existing products as part of their proposal. EPA is aware that many state, tribal, and local departments of health and environmental protection, as well as advocacy groups and community development groups, have already developed useful lead poisoning prevention tools for conducting outreach and education campaigns. In addition, EPA and other federal agencies have already developed, and currently provide, a wide range of outreach materials available from the National Lead Information Clearinghouse (1-800-424-LEAD). (Those potential applicants who are not familiar with materials available through the National Lead Information Clearinghouse may want to call and speak to a trained specialist at 1-800-424-LEAD. The trained specialists can help applicants identify specific types of outreach materials that already exist and thereby avoid spending resources to recreate the materials.)

[1] *Morbidity and Mortality Weekly Report*, U.S. Department of Health and Human Services, Center for Disease Control. February 21, 1997, Vol. 46, No. 7. *See this report for references within the quotation.

If an applicant chooses to develop new materials or use non-EPA materials, selected applicants will be required to obtain approval for the use of those materials from the EPA Project Officer during the post-award phase of the project (i.e., after the grant agreement is in place but before the grantee actually begins outreach activities). This approval is limited to the use of the materials under this grant program and will not necessarily be a formal EPA review and endorsement of any other organization's product. Any new materials developed by the applicant must be consistent with the Federal lead hazard awareness and poisoning prevention program. Applicants who propose to use existing materials (either EPA materials or non-EPA materials) should include a copy (or citation of EPA materials) of the proposed outreach materials with the grant application.

II. Activities and Criteria

EPA specifically seeks proposals for projects to conduct lead hazard awareness and lead poisoning prevention public education or outreach activities in high-risk communities. For the purposes of this grant proposal application process, the term high-risk target audience refers to communities which are predominantly low-income, minority (e.g., African American, Asian Pacific American, Hispanic American, American Indian), located in large metropolitan areas, or communities which consist predominantly of older housing. The Agency chose to define high-risk target audience in this way because children living in these communities are especially at risk to elevated levels of lead exposure. EPA will *not* consider applications that propose to use the funds for abatement projects. Below are examples of the types of the projects that applicants may want to consider.

Examples of projects include, but are not limited to:

- Training members of the medical profession who work in a particular community in lead-based paint hazard awareness and poisoning prevention.
- Increasing lead hazard awareness by distributing pamphlets and brochures at community meeting places, schools, and local events, and conducting follow-up seminars or information fairs.
- Developing and delivering lead poisoning prevention awareness programs for workers, living in high-risk target communities, who may bring lead back into their homes (due to occupational exposure).
- Creating a new information product, distributing it in a specified locale, and demonstrating that the product effectively communicates the lead hazard awareness messages.

Proposals will be evaluated based on the following criteria:

1. Identification of high-risk target audience.

- Does the applicant specify what subset of the population at-large will be the target audience for the project, e.g., parents of elementary school-age children in a particular public school district, or medical personnel in a specified neighborhood or district?
- Does the applicant indicate how the target audience fits into this grant program which targets people living in communities which are predominantly low-income, minority (e.g., African American, Asian Pacific American, Hispanic American, American Indian), located in large metropolitan areas, or consisting predominantly of older housing?

2. Relevancy of applicant's proposed outreach materials and activities to the target audience.

- Does the applicant demonstrate that the proposed outreach materials and activities are suitable for the target audience (i.e., appropriate language comprehension and cultural identification)?

3. Ability of applicant to deliver lead hazard awareness and poisoning prevention information directly to the applicant's intended target audience.

- Does the applicant indicate how the messages will be delivered, e.g., lecture, written material distribution, one-on-one interviews?
- Does the applicant indicate the number of people/families/medical personnel/etc. that will be reached?

4. Qualifications and experience of the applicant relative to the proposed project.

- Does the applicant demonstrate experience in community outreach activities?
- Does the applicant demonstrate experience in conducting public health or health education activities?
- Is the applicant knowledgeable about lead hazard awareness and poisoning prevention issues?
- Does the applicant have the properly trained staff and facilities to conduct the project?

5. Consistency of applicant's proposed outreach materials and activities with the Federal lead hazard awareness and poisoning prevention program.

- Are the messages proposed by the applicant consistent with EPA/HUD/CDC policies, guidelines, and regulations?

6. Provision for measuring and documenting the project's results quantitatively and qualitatively (evaluation).

- Is the applicant's proposed project designed in such a way that it is possible to measure and document the results quantitatively and qualitatively?
- Does the applicant identify the method that will be used to measure and document the project's results quantitatively and qualitatively?

7. Likelihood that the project can be replicated in other areas by other organizations to benefit other communities.

- Can this project, taking into account typical staff and financial restraints, be replicated by similar organizations in different locations to address a problem that exists in other communities?

III. Eligibility

Eligible recipients include, but are not limited to, non-profit organizations, institutions of higher learning, state and local associations, states, federally recognized Indian Tribes and tribal organizations, for-profit organizations, trade and professional associations, labor unions and joint labor/management trust funds. However, as a result of the Lobbying Disclosure Act of 1995, EPA (and other federal agencies) may not award grants to non-profit, section 501(c)(4) organizations that engage in lobbying activities. This restriction applies to any lobbying activities of a section 501(c)(4) organization without distinguishing between lobbying funded by federal money and lobbying funded by other sources.

In addition, the following conditions apply:

1. There are no requirements for matching funding under this grant program.
2. No applicant can receive two grants for the same project at one time. Applicants may submit more than one application so long as the applications are for separate and distinct projects.
3. If applicants will use funding from other sources (private or public) in carrying-out their proposed projects, the applicants must disclose those sources of funding in the application.
4. The grants under this program will be awarded as cooperative agreements to allow for the substantial involvement anticipated between EPA and the recipients during the post-award period for these projects.

IV. Grant Term

The applicant's proposed project period should start no earlier than November 1, 1997, and may last for up to 2 years; successful applicants may be granted extensions beyond the 2–year period, but those decisions will be made on a case-by-case basis, if and when they become necessary.

V. Pre-application Procedure

Applicants must submit a work plan and a budget (as described below) for the pre-application procedure. The Agency will use applicants' work plans and budgets to select projects to be funded under this grant program. After EPA conducts a review of all submitted pre-applications, successful applicants will be contacted and requested to submit other documents (such as the ''Application for Federal Assistance'' form (Standard Form 424 or SF424), a ''Budget Information: Non-Construction Programs'' form (SF424A) and other required forms) to complete the application process. However, for the purposes of the pre-application process, applicants must only submit a work plan and budget.

Applicants must submit one original and two copies of the application (double-sided copies are encouraged). Pre-applications must be reproducible (for example, stapled in the upper left hand corner, on white paper, and with page numbers).

1. *Work plan*. A work plan describes the applicant's proposed project. Work plans must be no more than 10 pages total. One page is one side of a single-spaced typed page. The pages must be letter size (8 ½'' x 11''), with normal type size (10 or 12 cpi) and must have margins that are at least 1 inch. The only appendices that EPA will accept are resumes of key personnel and copies of outreach materials (if appropriate to the application.)

2. *Budget*. The budget should include the following categories of costs: personnel, fringe benefits, travel, equipment, supplies, contractual, construction, other, total direct charges (sum of personnel, fringe benefits, travel, equipment, supplies, contractual, construction and other), indirect charges and total (sum of total direct charges and indirect charges.) All budgets must include funds to travel to Washington, DC or Atlanta, GA for an information sharing meeting of all successful grantees (at a time to be determined.)

List of Subjects

Environmental protection, Lead.

Dated: June 9, 1997.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 97–15563 Filed 6–12–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5841–9]

Small Community Environmental Compliance Assistance Grants for Two States

AGENCY: Environmental Protection Agency (EPA).

ACTION: Solicitation of Pre-proposals for FY 1997.

SUMMARY: The Office of Compliance at the Environmental Protection Agency (EPA) is soliciting pre-proposals from States seeking support for efforts to provide multi-media compliance assistance to small communities in a manner consistent with EPA's November 1995 Policy on Flexible State Enforcement Responses to Small Community Violations (the Policy). EPA has approximately $110,000 available for this purpose in 1997, and intends to award at least $55,000 to each of two States. States must use grant funds provided by EPA for a variety of activities related to small community environmental compliance assistance, including program development, training, building small communities' technical, administrative, or financial capacity, or overall project management. Grants will be awarded on a competitive basis.

DATES: The period for submission of pre-proposals for FY 1997 will begin upon publication of the **Federal Register** Notice. Pre-proposals must be submitted by mail and postmarked by July 7, 1997, to be considered for funding.

ADDRESSES: Please provide two copies of your pre-proposal to Carolyn Young, U.S. Environmental Protection Agency, Office of Compliance (2224A), 401 M Street, S.W., Washington, D.C. 20460.

APPLICATIONS: Pre-proposals must include a one page cover sheet that: identifies the submitting State (as defined below); lists the name, position within State government, address and telephone number of the person(s) who prepared the pre-proposal, and the person(s) or office(s) who would manage the effort if funded; and specifies the value of any proposed match, whether dollars or in-kind. The pre-proposal must contain a narrative description of how the State intends to offer comprehensive multi-media environmental compliance assistance to small communities in a manner consistent with EPA's Policy. The pre-proposal narrative must be limited to five double-sided pages. Pre-proposals must also include a plan for evaluating the effectiveness of the State's efforts. Pre-proposals lacking complete documentation will not be considered.

FOR FURTHER INFORMATION CONTACT: Carolyn Young, U.S. Environmental Protection Agency, Office of Compliance (2224A), 401 M Street, S.W., Washington, D.C. 20460, (202) 564–7062. Electronic mail may be sent to cyoung@epamail.epa.gov. The Policy is available at (http://es.inel.gov/oeca/scoplcy.html)

SUPPLEMENTARY INFORMATION:

I. Purpose and Scope

EPA's Policy on Flexible State Enforcement Responses to Small Community Violations (the Policy) encourages State efforts to help small communities achieve and maintain comprehensive multi-media environmental compliance. The intent of these grants is to help States build their capacity for providing small community compliance assistance consistent with the Policy. State implementation activities could include: project development, compliance training for operators or local government officials, and efforts to build the technical, administrative, or financial capacity of small communities.

II. Definitions

The term ''State'' includes territories and Native American tribes that have met the requirements for treatment as States. For the purposes of the Policy, the term ''small community'' means a non-profit governmental entity, incorporated or unincorporated, that supplies municipal services to a resident population of fewer than 2,500 people.

III. Who Is Eligible To Apply

Only States, as defined above, should submit pre-proposals.

IV. Questions To Be Addressed

In their pre-proposals, States wishing to apply for funding should address the following questions:

1. Who in your organization will be responsible for managing your participation in this effort?
2. What are the major activities you will support with a grant provided to your State?
3. What specific matching resources, if any, will you provide either in dollars or in-kind contributions?
4. How will the State integrate efforts supported by this grant into other activities directed to small communities?
5. What specific outcomes, both short-term and long-term, do you anticipate resulting from this effort?

6. How do you anticipate making your efforts useful to other States seeking to build capacity to provide small community environmental compliance assistance?

Selection and Awards Process

EPA's Office of Compliance will assess how well the small community assistance efforts described by a pre-proposal satisfy the criteria of the Policy. The Office of Compliance will also consider the extent to which the proposed efforts can be expected to produce long-term benefits by developing lasting mechanisms to increase the administrative, technical, and financial capacity of small communities. Matching resources from a State will be interpreted as an indication of the State's commitment to creating a sustainable program. The Office of Compliance hopes to identify State efforts whose successes may serve as models to other States.

After determining which pre-proposals have the most merit, the Office of Compliance will consult with the appropriate EPA Regional Offices before making its selection. EPA will make every effort to complete the selection process and notify the individual States selected by July 18, 1997. States will be notified of their selection and asked to prepare a formal grant proposal for submission to the Office of Compliance and the appropriate EPA Regional Office. As part of the formal grant proposal, States will be asked to develop workplans, including specific milestones, for implementing their programs over an initial two year period. EPA intends to complete its review of the formal proposals and award the grants before October 1, 1997.

Dated: May 19, 1997.

Ken Gigliello,

Acting Director, Chemical, Commercial Services, and Municipal Division United States Environmental Protection Agency.

[FR Doc. 97–15557 Filed 6–12–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00484; FRL–5723–8]

Plant Pesticide Registration Workshop; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: Under the Environmental Technology Initiative, EPA will hold a workshop in conjunction with the National Foundation for Integrated Pest Management Education to explain the process for registering plant pesticides pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended. Industry representatives will also present information on the research, development and commercialization of plant pesticides. There will be an opportunity for questions and comments from the attendees.

DATES: The meeting will be held on July 17, 1997 from 9 a.m to 5 p.m and July 18, 1997 from 9 a.m to 12 p.m.

ADDRESSES: The meeting will be held at the Doubletree Hotel, National Airport, 300 Army Navy Drive, Arlington, VA, and is open to the public.

FOR FURTHER INFORMATION CONTACT: By mail: Laura Sallmen Smith, Office of Pesticide Programs (7501W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 5th floor, 2800 Crystal Drive, Arlington, VA, 703-308-8716; e-mail:sallmen-smith.laura@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: As the development and commercialization of plant pesticides matures, the stakeholders involved in this industry need a better understanding of the issues facing the regulators and the regulated community. This understanding can serve to bring these potentially risk-reducing technologies to faster commercialization and use. Through a cooperative agreement with EPA, the National Foundation for Integrated Pest Management Education is sponsoring a workshop to bring EPA's regulators, the seed industry, researchers, plant pesticide registrants, and other interested stakeholders together to develop an understanding of the issues. This agreement was funded by President Clinton's Environmental Technology Initiative, which was designed to encourage public/private cooperation toward the goal of commercializing technologies whose use improves the environment. The conference will consist of formal presentations by EPA, the seed industry and researchers with panel discussions on issues of concern.

The following topics will be covered: plant pesticide registration process; types of studies required for registration and possible exemptions; labeling requirements; seed research and commercialization process. Time will be allotted for questions and open discussion.

List of Subjects

Environmental protection.

Dated: June 3, 1997.

Kathleen Knox,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs

[FR Doc. 97–15371 Filed 6–12–97; 8:45 a.m]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30430A; FRL–5721–4]

Abbott Laboratories; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by Abbott Laboratories, to conditionally register the pesticide products Retain Plant Growth Regulator Soluble Powder, ABG-3097 Plant Growth Regulator Soluble Powder, and ABG-3097 Technical Powder, containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Denise Greenway, Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Westfield Building North Tower, CS #1, Environmental Protection Agency, 2800 Crystal Drive, Arlington, VA 22202, 703–308–8263; e-mail: greenway.denise@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document and the Fact Sheet are available from the EPA home page at the Environmental Sub-Set entry for this document under ''Regulations'' (http://www.epa.gov/fedrgstr/).

EPA issued a notice, published in the **Federal Register** of February 26, 1997 (62 FR 8728; FRL–5589–3), which announced that Abbott Laboratories, Dept. 28R, Bldg., A1, 1401 Sheridan Road, North Chicago, IL 60064-4000, had submitted applications to register the pesticide products Retain Plant Growth Regulator Soluble Powder, ABG-3097 Plant Growth Regulator Soluble Powder, and ABG-3097 Technical Powder, (EPA File Symbols 275–RRE, 275–IO, and 275–II), containing the active ingredient aminoethoxyvinylglycine at 15, 86, and 86 percent respectively, active ingredients not included in any previously registered products.

The applications were approved on April 28, 1997, for one technical and two end-use products listed below:

1. Retain Plant Growth Regulator Soluble Powder for use on apples and pears (EPA Registration Number 275–112).

2. ABG-3097 Plant Growth Regulator Soluble Powder for nonfood greenhouse treatment of miniature carnations, hibiscus, or rooted geranium cuttings and seedlings (EPA Registration Number 275–89).

3. ABG-3097 Technical Powder for formulating into plant regulator end-use products for use on apples, pears, and certain ornamentals (EPA Registration Number 275–88).

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of aminoethoxyvinylglycine, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of aminoethoxyvinylglycine during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is in the public interest.

These products are conditionally registered in accordance with FIFRA section 3(c)(7)(C). If the conditions are not complied with the registrations will be subject to cancellation in accordance with FIFRA section 6(e).

Consistent with section 3(c)(7)(C), the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

More detailed information on these conditional registrations is contained in an EPA Pesticide Fact Sheet on aminoethoxyvinylglycine.

A copy of the fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: May 29, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 97–15370 Filed 6–12–97; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30410A/30413A; FRL–5722–2]

Certain Companies; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications to register the pesticide products Knockdown Brand Roach Bait System, Bedoukian *trans*-11-Tetradecenyl Acetate Technical Pheromone, and Bedoukian *cis*-11-Tetradecenyl Acetate Technical Pheromone, containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Rita Kumar, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. CS51B6, Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8291; e-mail: kumar.rita@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document and the Fact Sheet are available from the EPA home page at the Environmental Sub-Set entry for this document under ''Regulations'' (http://www.epa.gov/fedrgstr/).

EPA issued a notice, published in the **Federal Register** of May 17, 1996 (61 FR 24936; FRL–5367–6), which announced that Woodstream Corporation, 69 N. Locust St., Lititz, PA 17543–0327, had submitted an application to register the pesticide product Victor Roach Bait Station 2 (now known as Knockdown Brand Roach Bait System) (EPA File Symbol 47629–E), containing the new active ingredient German cockroach pheromone at 0.004 percent, which is formulated with boric acid, an active ingredient not included in any previously registered product.

EPA also published a notice in the **Federal Register** of June 19, 1996 (61 FR 31104; FRL–5376–2), which announced that Bedoukian Research, Inc., 21 Finance Drive, Danbury CT 06810–4192, had submitted applications to register the pesticide products Bedoukian *trans*-11-Tetradecenyl Acetate Technical Pheromone and Bedoukian *cis*-11-Tetradecenyl Acetate Technical Pheromone (EPA File Symbols 52991–I and 52991–T) containing the ingredients *trans*-11-tetradecenyl acetate and *cis*-11-tetradecenyl acetate at 90 and 96 percent respectively, active ingredients not included in any previously registered products.

The application for the product Knockdown Brand Roach Bait System (formerly known as Victor Roach Bait Station 2) was approved on November 27, 1996, for use to kill cockroaches in homes and commercial establishments, such as hospitals, restaurants, and schools (EPA Registration Number 47629–2).

The applications were approved on February 11, 1997, for manufacturing or formulating purposes only for the products Bedoukian *trans*-11-Tetradecenyl Acetate Technical Pheromone (EPA Registration Number 52991–8) and Bedoukian *cis*-11-Tetradecenyl Acetate Technical Pheromone (EPA Registration Number 52991–7).

The Agency has considered all required data on risks associated with the proposed use of German cockroach pheromone, *trans*-11-tetradecenyl acetate, and *cis*-11-tetradecenyl acetate, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health safety determinations which show that use of German cockroach pheromone, *trans*-11-tetradecenyl acetate, and *cis*-11-tetradecenyl acetate when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

More detailed information on these registrations is contained in an EPA Pesticide Fact Sheet on German cockroach pheromone, *trans*-11-tetradecenyl acetate, and *cis*-11-tetradecenyl acetate.

A copy of these fact sheets, which provide a summary description of the pesticides, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703-305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: May 30, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 97–15562 Filed 6–12–97; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30436; FRL–5719–4]

Primavera Laboratories, Inc.; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by July 14, 1997.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30436] and the file symbol to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION.'' No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: John Tice, Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460. Office location and telephone number: Rm. CS51B6, Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8295; e-mail: tice.john@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing an Active Ingredient Not Included in any Previously Registered Products

1. File Symbol: 65233–I. Applicant: Primavera Laboratories, Inc., 99 Biltmore Avenue, Suite 254, Rye, NY 10580–1891. Product Name: Bioveramar III. Insect Repellent. Active ingredient: *P*-Menthane-3,8-diol (Eucalyptus Citriadora Crystal) at 32 percent. Proposed classification/Use: General. For formulation into insect repellents intended for human external use only.

2. File Symbol: 65233–T. Applicant: Primavera Laboratories, Inc. Product Name: Eucrys. Insect Repellent. Active ingredient: *P*-Menthane-3,8-diol (Eucalyptus Citriadora Crystal) at 100 percent. Proposed classification/Use: General. For formulation into insect repellents intended for human external use only.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP–30436] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official notice record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30436]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Written comments filed pursuant to this notice, will be available in the Public Information and Records Integrity Branch, Information Resources and Services Division at the address provided, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays. It is suggested that persons interested in reviewing the application file, telephone this office at (703–305–5805) to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pest, Product registration.

Dated: May 29, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 97–15561 Filed 6–12–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66240; FRL 5715–9]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by December 10, 1997, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier, delivery, telephone number and e-mail: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 43 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000228–00258	Riverdale Team 1.50% Sprayable Weed and Feed	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N,N*-dipropyl-*p*-toluidine) (Note: α = alpha) *N*-Butyl-*N*-ethyl-α,α,α-trifluoro-2,6-dinitro-*p*-toluidine (Note: α = alpha)
000228–00259	Riverdale Team 10% Sprayable Weed and Feed	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N,N*-dipropyl-*p*-toluidine) (Note: α = alpha) *N*-Butyl-*N*-ethyl-α,α,α-trifluoro-2,6-dinitro-*p*-toluidine (Note: α = alpha)
000264–00454	Lindane Crystals	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer)
000264–00455	Lindane Powder	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer)
000352 OH–78–0010	Vydate L Oxamyl Insecticide/nematicide	Oxamimidic acid, *N',N'*-dimethyl-*N*-((methylcarbamoyl)oxy)-1-thio-, met
000773–00077	Prolate 5 Dust	*N*-(Mercaptomethyl)phthalimide *S*-(*O,O*-dimetyl phosphorodithioate)
002382–00073	Carbaryl Flea Spray	Butoxypolypropylene glycol 1-Naphthyl-*N*-methylcarbamate (Butylcarbityl) (6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
002749–00117	Chlorpropham Technical	Isopropyl *N-(3-chlorophenyl) carbamate*
002935 ID–87–0012	Wilbur-Ellis Methyl Parathion 5 Spray	*O,O*-Dimethyl *o-p*-nitrophenyl phosphorothioate
002935 ID–92–0007	Wilbur-Ellis Methyl Parathion 5 Spray	*O,O*-Dimethyl *o-p*-nitrophenyl phosphorothioate
002935 MT–92–0004	Wilbur-Ellis Methyl Parathion 5 Spray	*O,O*-Dimethyl *o-p*-nitrophenyl phosphorothioate
002935 NV–78–0004	Red-Top Methyl Parathion 5 Spray	*O,O*-Dimethyl *o-p*-nitrophenyl phosphorothioate

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
002935 OR–92–0012	Wilbur-Ellis Methyl Parathion 5 Spray	*O,O*-Dimethyl *o*-*p*-nitrophenyl phosphorothioate
002935 TX–91–0009	Methyl Parathion 4 Spray	*O,O*-Dimethyl *o*-*p*-nitrophenyl phosphorothioate
002935 WA–92–0016	Wilbur-Ellis Methyl Parathion 5 Spray	*O,O*-Dimethyl *o*-*p*-nitrophenyl phosphorothioate
003150–00001	Cetylcide	Isopropanol Alkyl* dimethyl benzyl ammonium chloride *(50%C_{12}, 30%C_{14}, 17%C_{16}, 3%) Cetyl dimethyl ethyl ammonium bromide
003150–00003	Cetylite Spray Cleaner	Isopropanol Alkyl* dimethyl benzyl ammonium chloride *(50%C_{12}, 30%C_{14}, 17%C_{16}, 3%) Cetyl dimethyl ethyl ammonium bromide
004787–00022	Prentox Methyl Parathion Technical	*O,O*-Dimethyl *o*-*p*-nitrophenyl phosphorothioate
004787 TX–96–0013	Methyl Parathion 4EC	*O,O*-Dimethyl *o*-*p*-nitrophenyl phosphorothioate
005905 ID–92–0006	Helena 4 lb. Methyl Parathion Emulsifiable Concentrate	*O,O*-Dimethyl *o*-*p*-nitrophenyl phosphorothioate
005905 TX–95–0012	Helena 4 lb. Methyl Parathion Emulsifiable Concentrate	*O,O*-Dimethyl *o*-*p*-nitrophenyl phosphorothioate
005905 WA–92–0014	Helena 4 lb. Methyl Parathion Emulsifiable Concentrate	*O,O*-Dimethyl *o*-*p*-nitrophenyl phosphorothioate
010163–00073	Gowan Methyl Parathion 7.5	*O,O*-Dimethyl *o*-*p*-nitrophenyl phosphorothioate
011556–00025	Co-Ral (Coumaphos) Cattle Insecticide Pour-On	*O,O*-Diethyl *O*-(3-chloro-4-methyl-2-oxo-2*H*-1-benzopyran-7-yl) phosphorothioate
011656–00018	Western Farm Service Diazinon AG 500	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
011656–00069	Diazinon 50WP Insecticide	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
030950–00002	R Maldonado Diazinon AG 500	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
034704–00630	Dichloroprop Technical (2,4-DP)	2-(2,4-Dichlorophenoxy)propionic acid
034704 DE–91–0001	Sprout Nip Emulsifiable Concentrate	Isopropyl *N*-(3-chlorophenyl) carbamate
034704 MD–91–0008	Sprout Nip Emulsifiable Concentrate	Isopropyl *N*-(3-chlorophenyl) carbamate
034704 ND–82–0021	Spud Nic-4	Isopropyl *N*-(3-chlorophenyl) carbamate
034704 NJ–91–0001	Sprout Nip Emulsifiable Concentrate	Isopropyl *N*-(3-chlorophenyl) carbamate
034704 VA–91–0004	Sprout Nip Emulsifiable Concentrate	Isopropyl *N*-(3-chlorophenyl) carbamate
038167 TX–91–0006	7.5 lb. Methyl Parathion	*O,O-Dimethyl o*-*p*-nitrophenyl phosphorothioate
051036 ID–94–0005	Methyl Parathion 4 EC	O,O-Dimethyl *o*-*p*-nitrophenyl phosphorothioate
051036 TX–94–0007	Methyl Parathion 4 EC	O,O-Dimethyl *o*-*p*-nitrophenyl phosphorothioate
051036 WA–94–0028	Methyl Parathion 4 EC	O,O-Dimethyl *o*-*p*-nitrophenyl phosphorothioate
062719–00010	Dursban 6	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
062719–00049	Dursban MCR	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
062719–00051	Dursban 6R	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
065726–00001	Pin Nip 7A -- Aerosol Sprout Inhibitor	Isopropyl *N*-(3-chlorophenyl) carbamate
069096–00001	Doulton Sterasyl Bacteriostatic Water Filter Element	Silver
069096–00002	Doulton Carbosyl Bacteriostatic Water Filter Element	Silver

Unless a request is withdrawn by the registrant within 180 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90–day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000228	Riverdale Chemical Co., 425 W. 194th St., Glenwood, IL 60425.
000264	Rhone-Poulenc Ag Co., Box 12014, Research Triangle Park, NC 27709.
000352	E. I. Du Pont De Nemours & Co., Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
000773	Mallinckrodt Veterinary Inc., Director, Regulatory Affairs, 421 E. Hawley St., Mundelein, IL 60060.
002382	Virbac Inc., Box 162059, Fort Worth, TX 76161.
002749	Aceto Agriculture Chemicals Corp., One Hollow Lane, Lake Success, NY 11042.
002935	Wilbur Ellis Co., 191 W. Shaw Ave., Fresno, CA 93704.
003150	Cetylite Industries Inc., 9051 River Rd., Pennsauken, NJ 08110.
004787	Cheminova Agro A/S, 1700 Route 23, Suite 210, Wayne, NJ 07470.
005905	Helena Chemical Co., 6075 Poplar Ave., Suite 500, Memphis, TN 38119.
010163	Gowan Co., Box 5569, Yuma, AZ 85366.
011556	Bayer Corp., Agriculture Division, Animal Health, Box 390, Shawnee Mission, KS 66201.
011656	Western Farm Service, Inc., Attn: W.G. Purdy, 509 W. Weber Ave., Stockton, CA 95203.
030950	Maldonado & Co., Inc., Box 363231, San Juan, PR 00936.
034704	Cherie Garner, Agent For: Platte Chemical Co., Inc., Box 667, Greeley, CO 80632.
038167	Setre Chemical Co., 6075 Poplar Ave, Suite 500, Memphis, TN 38119.
051036	Micro-Flo Co., Box 5948, Lakeland, FL 33807.
062719	DowElanco, 9330 Zionsville Rd., 308/3e, Indianapolis, IN 46268.
065726	E.R. Butts International Inc., Agent For: Pin Nip Inc., Box 764, Fairfield, CT 06430.
069096	Stewart Pesticide Registration Associates Inc., Agent For: Fairy Industrial Ceramics Lim, 1901 N. Moore St., Ste 603, Arlington, VA 22209.

III. Loss of Active Ingredients

Unless the requests for cancellation are withdrawn, one pesticide active ingredient will no longer appear in any registered products. Those who are concerned about the potential loss of this active ingredient for pesticidal use are encouraged to work directly with the registrant(s) to explore the possibility of withdrawing their request for cancellation. The active ingredient is listed in the following Table 3, with the EPA Company and CAS Number.

TABLE 3. — ACTIVE INGREDIENTS WHICH WOULD DISAPPEAR AS A RESULT OF REGISTRANTS' REQUESTS TO CANCEL

Cas No.	Chemical Name	EPA Company No.
124–03–8	Cetyl dimethyl ethyl ammonium bromide	003150

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before December 10, 1997. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** (56 FR 29362) June 26, 1991; [FRL 3846–4]. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: June 2, 1997.

Linda A. Travers,

Director, Information Resources and Services Divisions, Office of Pesticide Programs.

[FR Doc. 97–15560 Filed 6–12–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–738; FRL–5721–6]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

DATES: Comments, identified by the docket control number PF–738, must be received on or before July 14, 1997.

ADDRESSES: By mail submit written comments to: Public Response and Program Resources Branch, Field Operations Divison (7505C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The Product Manager (PM 90), Biopesticides and Pollution Prevention Division, (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, listed in the table below:

Name	Location	Phone No.	E-mail address
Linda Hollis	5th Floor 5-J, CS#1, 2800 Crystal Drive, Arlington, VA.	703–308–8733	hollis.linda@epamail.epa.gov
Sheryl Reilly	5th Floor 5–W31, do.	703–308–8265	reilly.sheryl@epamail.epa.gov

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various raw agricultural commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice, as well as the public version, has been established for this notice of filing under docket control number PF–738 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES''.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number PF–738 and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Authority: 21 U.S.C. 346a.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 29, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summaries of Petitions

Below summaries of the pesticide petitions are printed. The summaries of the petitions were prepared by the petitioners. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. W. Neudorff GmbH KG Petition Summary:

PP 7F4804

EPA has received a pesticide petition (PP 7F4804) from W. Neudorff GmbH KG (''Neudorff''), c/o Walter G. Talarek, 1008 Riva Ridge Drive, Great Falls, VA 22066, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. section 346a(d), to amend 40 CFR Part 180 by establishing an exemption from the requirement for a tolerance for residues of the mollusicide iron phosphate when used in accordance with good agricultural practice as an active ingredient in pesticide formulations applied to growing crops.

A. Proposed Use Practices

1. *Recommended amount, frequency, method and time of application of pesticide chemical.* The amount, frequency, method and time of application of the pesticide are described in detail on the label of ''NEU 1165M Slug and Snail Bait''. This label was submitted to EPA as part of Neudorff's application for registration, EPA File Symbol 67702–G. However, in

summary, the bait should be scattered by hand or with a granular spreader at the rate of 1 pound (lb.) per 1,000 square feet to the surface of damp soil. The bait can be applied either prior to or after infestation by slugs or snails. Evening is the best time to apply the bait. The bait should be reapplied as it is consumed or at least every two weeks.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* The active ingredient is iron phosphate, also known as ferric orthophosphate; ferric phosphate; Fe(+3) phosphate; iron (III) phosphate; and phosphoric acid, and iron (3+) salt (1:1), which has a CAS #10045–86–0. Iron phosphate is practically insoluble in water and would only degrade through the metabolism of microorganisms in the soil and via the chemistry of plant root exudates which would utilize the degradates for plant growth. In certain soil types, iron phosphate may produce iron oxides and hydroxides that are no different from those normally found in soils, and which give soils their brown and red colors. Although some bacteria can reduce Iron (III) to the more mobile Iron (II), reoxidation and reprecipitation to Fe (III) oxides and hydroxides will rapidly immobilize any free Fe (II) that may form.

2. *Magnitude of the residue anticipated at the time of harvest and method used to determine the residue.* A waiver has been requested for these data requirements based on iron phosphate's (1) known low toxicity and risks, (2) natural occurrence and abundance in the environment, (3) widespread use as human nutrient and dietary supplements and in infant formula, (4) FDA generally recognized as safe (''GRAS'') status, (5) unique, non-toxic mode of action, (6) data available in the open literature, and (7) the fact that any degradates or metabolites of iron phosphate would be identical to those formed in nature, thus indicating that they should pose no unreasonable risks.

There are other factors which indicate that residues of iron phosphate are unlikely to occur, or if they do occur they are unlikely to be at levels of concern to human health. Iron phosphate from the Slug and Snail Bait most likely would not occur in plants, because it needs to be biodegraded via microbial action or plant root exudates before plants can utilize it. Furthermore, the use pattern for the Slug and Snail bait, where the product is not applied directly to plants but around them, and the facts that iron phosphate is insoluble in water and readily adsorbs to soils, would limit the availability of the chemical to plants. Last, even if residues of the chemical were to occur on plants, this chemical contains substances which are essential animal and plant nutrients, and there are chemical and physical factors which limit their availability in humans and growing plants.

3. *Statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* Neudorff has not proposed an analytical method, because iron residue levels harmful to plants and animals are highly unlikely to occur when its Slug and Snail Bait product is applied according to label directions. Iron phosphate is an FDA-approved GRAS direct and indirect food additive which is not expected to present any significant adverse health effects to humans. Moreover, this chemical contains certain substances which are essential animal and plant nutrients, and there are chemical and physical factors which limit their availability in humans and growing plants. Furthermore, toxic levels of iron in plants induce an imbalance with other metals which causes plant dwarfing, stunted roots and decreased growth and yields, which effects appear before significant iron buildup occurs, and consequently acts as a warning which prevents excess application of iron compounds to plants. In addition, given the use pattern for the Slug and Snail Bait, where the product is not applied directly to plants but around them, and the fact that iron phosphate is insoluble in water and readily adsorbs to soils, there is unlikely to be significant amounts of residue in or on treated crops. Last, iron phosphate from the bait most likely would not occur in plants because it needs to be biodegraded via microbial action or plant root exudates before plants can utilize it.

C. Mammalian Toxicological Profile

1. *Acute toxicity*. The iron salts are of low acute toxicity through oral, dermal and inhalation routes of exposure. Results of studies conducted on the end-use product for which Neudorff has applied for registration confirm that this chemical has low acute toxicities. Iron phosphate is insoluble in water. Because of this, it is not as bioavailable as other iron salts, and it is not readily absorbed from the gastrointestinal tract into the systemic circulation. Consequently, it may be concluded that iron phosphate will have lower acute toxicities than the water-soluble iron salts.

2. *Genotoxicity, reproductive and developmental toxicity, subchronic toxicity, and chronic toxicity.* There is adequate information available from literature sources to characterize the toxicity of the iron salts (iron phosphate is an iron salt). Literature sources show that the iron salts have known low toxicities and risks and occur naturally and abundantly in the environment. Iron is recognized as an essential mineral nutrient for humans and all other vertebrate animals. It is a component of hemoglobin and myoglobin molecules, being the central atom in the heme portion of the molecule. The hemoglobin in red blood cells transports oxygen from the lungs to body cells and returns waste carbon dioxide from the cells to the lungs. The myoblobin in red muscle tissue transports oxygen into the tissues for energy storage. Iron also is a component of certain metabolic enzymes. Iron in the body that is not in use in these molecules is stored in the spleen, bone marrow and liver. Increased requirements for iron occur during the growth period and pregnacy and with excessive menses and other instances of blood loss. The average diet contains 10 to 15 mg a day, adequate for most people. Lack of sufficient iron causes fatigue and paleness and eventually leads to some form of anemia. With increases in iron beyond the physiologic limits, most of it is excreted in the feces, but small amounts may accumulate. Some iron may be excreted via the bile. In cases of overload, iron is excreted in the urine, and the presence of high urinary iron concentrations is indicative of excessive iron. Normally, significant quantities of iron are excreted by loss of epithelial cells of the gastrointestinal tract.

The ''R.E.D. Facts on Iron Salts'', EPA–738–F–93–002 (February 1993), state that ''[i]ron salts are normally present in the environment. Iron is the fourth most abundant element and the second most abundant metal in the earth's crystal rocks. Iron occurs in a wide variety of minerals, and is present in foods naturally and through added ingredients. ''The iron salts are of low acute toxicity through oral, dermal and inhalation routes of exposure. They have been placed in Toxicity Category III for these effects. ... Other toxicity studies normally required for registration were not necessary to evaluate the risks of the iron salts. ''Further, the iron salts are generally recognized as safe (GRAS) by the Food and Drug Administration for use as a flavoring agent and nutrient supplement in foods (please see 40 CFR 180.2(a)).''

It should be noted that FDA has promulgated GRAS direct and indirect food additive regulations for ferric phosphate, at 21 CFR sections 184.1301 and 182.5301, respectively. As a direct food additive, ferric phosphate may be used as a nutrient supplement and in infant formula in accordance with good manufacturing practice. As an indirect food additive, it may be used as a dietary supplement in accordance with good manufacturing practice. The Reregistration Eligibility Document (''RED'') on Iron Salts, EPA–738–S–93–001 (February 1993), indicates that the current toxicological database within the Agency and in the literature is adequate to support the reregistration eligibility of all iron sulfates.

Further, this document states that there are some unusual factors which indicate that specific studies to fulfill the usual data requirements are not necessary to regulate these substances as pesticides. The document goes on to list these factors as: (1) iron salts are normally present in the environment; (2) they may be present in foods naturally and as added ingredients; and (3) there is no reason to expect that usage in accordance with the label will present any hazard beyond that from ordinary exposure. By inference, this rationale for not requiring additional toxicological data for iron sulfates should be equally applicable to any other iron salt, such as iron phosphate.

D. Aggregate Exposure

1. *Dietary exposure. (a) Food* - There is no evidence of adverse health effects resulting from dietary exposure to insoluble iron salts, except in the case of massive intake disrupting the natural homeostatic mechanism controlling body level of iron. The risk from exposure to food containing iron phosphate is negligible due to its low toxicities, status as a food flavoring agent and a food nutrient supplement, and inherent function in the metabolic pathways of humans and animals.

(b) *Drinking water*. Iron phosphate is insoluble in water. As such, its biologic availability is limited. EPA has not established a maximum contaminant level or a maximum contaminant level goal for iron under the Safe Drinking Water Act. However, a secondary maximum contaminant level of 0.3 mg/L has been established. This level represents a level protective of aesthetic values, such as odor or appearance.

2. *Non-Dietary exposure*. Neudorff also is registering its Slug and Snail Bait for use on outdoor ornamentals and lawns. Therefore, applicators who apply this product to crops, ornamentals and lawns could be exposed. However, protective measures prescribed by the product's label are expected to be adequate to minimize exposure and protect applicators of this chemical. It also should be noted that the Iron Salts RED states that mixer/loader/applicator exposure to the iron sulfates is considered inconsequential, whether these substances are applied by spreaders, sprinkler cans or by hand and whether the product is granular or a soluble concentrate, because there is little concern from a toxicity perspective. Moreover, the document states that the risks from dietary and occupational exposures are considered to be negligible due to their low toxicities, status as food flavoring agents and food nutrient supplements, and inherent function in the metabolic pathways of humans and animals.

E. Cumulative Effects

Since Neudorff's Slug and Snail Bait is the first pesticide product containing iron phosphate being registered with EPA, there will not be exposures to this chemical through other pesticides. Although not widely used as a fertilizer, due to its insolubility in water, iron phosphate can be used as a fertilizer in acidic soils. Therefore, there is the possibility that in certain limited circumstances, there could be cumulative exposures to this chemical.

F. Safety Determination

1. *U.S. population*. The metabolism of iron in man and growing plants is well understood and documented in the available literature. The use of iron phosphate as an active ingredient in slug and snail baits applied around and not on growing crops would not contribute significantly to the level of iron found naturally in the environment and to which man is exposed. Further, there is adequate information to show that there is no toxicological concern raised by the contribution of iron to growing crops, which is likely to result from the use of slug and snail baits containing iron, and consequently no tolerance should be required for the use of iron phosphate.

2. *Infants and children*. Increased requirements for iron occur during the growth period and pregnacy and with excessive menses and other instances of blood loss. The menstruating female requires about 21 ug/kg per day (about 1.4 mg). In the last two trimesters of pregnancy, requirements increase to about 80 μg/kg per day (5 to 6 mg), and there are similar requirements for the infant due to its rapid growth (Finch, 1976). During these periods, absorption of iron is greatly increased (Casarett and Doull's, 1991). Iron has been shown to cross the placenta and concentrate in the fetus. The concentration of iron in the fetus may serve a valuable physiologic purpose, inasmuch as it prevents anemia caused by rapid growth in the absence of sufficient supplies of iron in the mother's milk (Casarett and Doull's, 1980).

G. Existing Tolerances

1. *Existing tolerances or tolerance exemptions*. EPA has not established a tolerance or an exemption from the requirement for a tolerance for iron phosphate. However, EPA has established tolerance exemptions for other iron salts, i. e., iron sulfate and ferric chloride. See 40 CFR sections 180.1001(c) and (d).

2. *International tolerances*. No maximum residue level has been established for this substance by the Codex Alimentarius Commission. (Sheryl Reilly)

2. Plant Health Technologies Petition Summary:

PP 7G4817

EPA has received a pesticide petition (PP 7G4817) from Plant Health Technologies, P.O. Box 198, Lathrop, California 95330, proposing pursuant to section 408 (d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. section 346a (d), to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for the residues of the biochemical pesticide, *Pantoea agglomerans* Strain C9–1, when applied in accordance with good agricultural practices in or on all raw agricultural commodities.

A. Proposed Use Practices

Pantoea agglomerans strain C9–1 is proposed for use to control Fire Blight (Erwinia amylovora) in apples and pears. Three to 6 applications will be made starting at 20 percent bloom through petal fall.

B. Product Identity/Chemistry

1. *Product name*. The product trade name is BlightBan C9–1. The active ingredient is the naturally occurring bacterium, P. agglomerans strain C9–1. Formulated product will contain 71 percent active ingredient and 29 percent inert ingredients.

2. *Magnitude of residue*. Plant Health Technologies believes that no residues are expected on the crop at the time of harvest. P. agglomerans colonizes the blossom and stigma and requires specific moisture and temperature conditions to grow. Strain C9–1 is not expected to colonize the fruit. This species occurs naturally in the environment and populations of indigenous P. agglomerans isolates may also be present in a variety of habitats.

3. Plant Health Technologies states that an analytical method is not needed because residues are not expected on crops at harvest.

C. Mammalian Toxicological Profile

Plant Health Technologies has submitted data in support of the exemption from tolerance for P. agglomerans Strain C9–1 to include: an acute oral toxicity in rats, an acute dermal toxicity/irritation study in rabbits; a primary eye irritation study in rabbits, an acute intratracheal toxicity/pathogenicity study in rats, and an acute intravenous toxicity/pathogenicity study in rats.

The results of these studies indicate that P. agglomerans Strain C9–1 has an acute oral toxicity greater than 5 grams/kilograms (g/kg) body weight in rats, an acute dermal toxicity greater than 2 g/kg body weight in rabbits, and causes slight to mild skin and eye irritation in rabbits. There was no evidence of toxicity or pathogenicity related to P. agglomerans Strain C9–1 in rats administered 1.63×108, 9.83×107, and 2.1×107 CFU by oral, intratracheal, or intravenous routes, respectively. Total clearance of the organism occurred rapidly in all cases.

D. Aggregate Exposure

Dietary and non-dietary exposure: For the purpose of assessing the potential dietary exposure under this tolerance exemption, it was considered that P. agglomerans strain C9–1 would not be present in raw agricultural commodities. Strain C9–1 is applied at blossom, before fruit development, and several months before harvest. C9–1 does not readily colonize the fruit. Plant Health Technolgies states that because strain C9–1 is a plant colonizing microorganism and will not be used in residential, home garden, or lawn care situations, other potential sources of dietary and non-dietary exposure to the general population such as drinking water and non-occupational exposures are not expected to be significant.

E. Cumulative Effects

The potential for cumulative effects of P. agglomerans strain C9–1 was also considered. C9–1 inhibits pest microorganisms from becoming established by out-competing the pests for space and nutrients, and through the production of herbicolin antibiotics. Applying strain C9–1 in relatively high doses to developing (uncolonized) apple and pear blossoms, confers a competitive advantage to strain C9–1, enabling the isolate to colonize specific plant surfaces before the pest microorganism has an opportunity to become established. While many microorganisms thrive in specific habitats due to competitive displacement, Plant Health Technologies believes that there is no reasonable basis to expect that P. agglomerans strain C9–1 exhibits a particular mechanism of toxicity in common with other pesticides and chemical substances. Moreover, aggregate exposure of humans to strain C9–1 is negligible. Therefore, PHT concludes that any effects attributable to P. agglomerans strain C9–1 would not be cumulative with those of any other substances. Thus, PHT believes it is appropriate to consider only the potential risks of P. agglomerans in the aggregate exposure assessment.

F. Safety Determination

1. *Population in general.* As a species, Pantoea agglomerans is ubiquitous, having been isolated from plants, animals, soil and water. Scientists have worked with biocontrol isolates belonging to the Pantoea agglomerans complex for over 50 years with no reported adverse effects. There is no evidence of toxicity or pathogenicity related to P. agglomerans Strain C9–1 by oral, intratracheal or intravenous routes. Based on this, and the lack of exposure to humans, Plant Health Technologies believes that the aggregate exposure to P. agglomerans strain C9–1 over a lifetime will not pose appreciable risks to human health. Thus, PHT concludes that there is a reasonable certainty that no harm will result from aggregate exposure to Pantoea agglomerans strain C9–1 residues and that exempting P. agglomerans strain C9–1 from the requirement of a tolerance is safe.

2. *Infants and children.* The toxicity, pathogenicity, and exposure data are sufficiently complete to adequately address the potential for additional sensitivity of infants and children to residues of P. agglomerans. Due to the lack of adverse effects and negligible exposure, Plant Health Technologies concludes with reasonable certainty, that no harm will result to infants and children from aggregate exposure to P. agglomerans.

G. Existing Tolerances

No tolerances or exemptions for tolerance have been issued in the United States or internationally for this microorganism. (Linda Hollis)

3. Tenneco Packaging Petition Summary:

PP 7F4818

A. Proposed Use Practices

Tenneco Packaging, 1603 Orrington Ave., Evanston, IL., 60201, has requested EPA to exempt methyl salicylate from the requirement of a tolerance in or on agricultural commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, when used as a insect repellent in food packaging and animal feed packaging materials alone or in conjunction with inert components which conform to the requirements of regulations issued by the Food and Drug Administration under section 409 of the Federal Food, Drug, and Comestic Act (FFDCA).

B. Product Identity/Chemistry

Methyl salicylate (CAS Registry Number 119–36–8) is the primary chemical component of a naturally occurring fragrant oil, oil of wintergreen. Petitioner has stated that, if present at all, residues of methyl salicylate that may be found in foods in contact with treated packaging materials will be minimal and considerably below the levels expected in existing GRAS uses of the active ingredient as a direct food flavoring ingredient.

C. Toxicological Profile

The toxicity of methyl salicylate has been extensively studied in animal bioassays of acute, subchronic, and chronic duration. Studies include assessments of the mutagenicity, teratogenicity, and reproductive effects of methyl salicylate.

1. *Acute toxicity.* The acute oral LD_{50} for methyl salicylate in the rat ranges from 887–1,250 mg/kg. Acute dermal toxicity (LD_{50} dermal) has been reported to be 0.70 ml/kg (approx. 700 mg/kg) in guinea pigs, and > 5 g/kg in the rabbit.

2. *Skin and eye irritation.* Methyl salicylate has been reported to be a severe eye irritant. Methyl salicylate has been reported to produce mild dermal irritation in rabbits at a concentration of 1 percent. Moderate to severe irritation is produced in rabbits and guinea pigs at concentrations above 1 percent. Applied full strength to intact or abraded rabbit skin for 24 hours under occlusion, methyl salicylate was moderately irritating. However, tested at 8 percent in petrolatum, it produced no irritation after a 48 hour closed-patch test on human subjects.

3. *Mutagenicity.* No evidence for genotoxicity was observed in two studies with prokaryotic test systems;

no data on genotoxicity in mammalian test systems are available.

4. *Subchronic toxicity.* Studies of subchronic duration with administration by the oral route have been conducted in both rats and dogs. In rats, no adverse effects were seen at a dose of 0.1 percent in the diet. In dogs, doses ≤250 mg/kg/day did not result in any adverse effects, however, the liver appeared to be the target organ of toxicity at doses above this level. No toxicity was observed when rats were exposed to methyl salicylate via inhalation of saturated air (approx. 700 mg/m3) after twenty 7–hour exposures.

5. *Teratogenicity.* Methyl salicylate has been tested for teratogenic potential in hamsters, rats and mice by several different routes of administration. In hamsters, at dose levels of methyl salicylate which produced maternal toxicity, an increased incidence of neural tube defects was also observed. The no observed adverse effects level (NOAEL) for developmental effects in rats given methyl salicylate by the dermal route (assuming 100 percent absorption) was 180 mg/kg/day (the highest dose tested). In mice, the NOAEL for developmental effects in a continuous breeding study using oral administration was 100 mg/kg/day based on decreases in numbers of live pups per litter, percentage of live pups, and pup weight.

6. *Chronic Toxicity.* Toxicity resulting from chronic exposure has been evaluated in studies of two-years' duration as well as studies initially intended to evaluate multi-generational reproductive and developmental effects. In mice, the NOAEL for reproductive parameters and the other toxic endpoints examined has been reported as 250 mg/kg/day. When rats were exposed to methyl salicylate in the diet for two years, no adverse effects were noted at levels of 0.1 percent (approx. 50 mg/kg/day); pituitary lesions were increased in animals exposed to 0.5 percent (approx. 250 mg/kg/day). In dogs orally exposed to methyl salicylate for two years, no adverse effects were observed at 50 mg/kg/day; the LOAEL (liver effects) was reported as 150 mg/kg/day.

7. *Carcinogenicity.* No studies have been performed with the primary purpose of determining the oncogenicity of methyl salicylate; however, chronic exposure studies with two-year exposure durations that included extensive pathology did not indicate any increases in incidences of benign or malignant tumors.

8. *GRAS Assessment.* The Flavoring Extract Manufacturer's Association (FEMA) has determined GRAS levels of methyl salicylate and oil of wintergreen in foods and beverages as indicated in the table below.

FEMA GRAS LEVELS IN FOOD (PPM)

Food	Methyl Salicylate	Oil of Wintergreen
Beverages	59	56
Ice cream	27	44
Candy	840	260
Baked goods	54	1,500
Chewing gum	8,400	3,900
Syrups	200	

GRAS food levels in the Table are above both the maximum food residue concentration (approx. 16 ppm) and the maximum dietary exposure concentration (approx. 4.7 ppm) estimated by the Petitioner for the proposed use pattern for methyl salicylate. These estimates used highly conservative assumptions for migration of methyl salicylate from packaging and food consumption. Petitioner has shown that even under worst-case exposure conditions (i.e., assuming 30 percent of all food consumed is in contact with packaging containing methyl salicylate, and 100 percent of the methyl salicylate migrates to food) exposure to methyl salicylate from use in packaging materials would be less than that received by chewing one stick of chewing gum at the GRAS-approved level. Based on this comparison, use of methyl salicylate in food packaging materials should also be considered GRAS.

D. Aggregate Exposure

There is no established Maximum Contaminant Level (MCL) for residues of methyl salicylate in drinking water under the Safe Drinking Water Act.

The Petitioner is aware of five currently registered products containing methyl salicylate as an active ingredient. These products include two categories: *(1)* impregnated materials and pellets to be used as vertebrate repellents, and *(2)* disinfectants/germicides registered for use in household, institutional, hospital, and eating establishment premises. Although these registered uses could potentially result in exposures to methyl salicylate, EPA did not require establishment of a tolerance (or an exemption from the requirement of a tolerance) for methyl salicylate as a condition for granting registrations for these products. Petitioner believes that anticipated dietary exposures from these registered products would be indirect (i.e., resulting from food contact with a treated surface) and therefore very low.

In addition to the anticipated dietary exposure to methyl salicylate from Petitioner's proposed use (i.e., food packaging materials) estimated in Section A.8., above, drinking water is the only reasonably anticipated additional exposure resulting from pesticidal uses of methyl salicylate. Based on its rapid environmental degradation, Petitioner does not anticipate the occurrence of pesticidal residues of methyl salicylate in drinking water and is not aware of any existing residues.

Therefore, the potential for non-occupational, non-dietary exposure to the general population as a result of pesticidal use of methyl salicylate in food packaging materials is not expected to be significant.

E. Cumulative Effects

The Petitioner has also considered the potential for cumulative toxicity effects of pesticidal uses of methyl salicylate and other pesticidal substances that may have a common mechanism of toxicity. Petitioner has concluded that consideration of a common mechanism of toxicity is not appropriate because there is no information available from the publicly available literature indicating that there are other pesticidal substances that operate via a mechanism of action common with methyl salicylate. Thus, Petitioner recommends that only the potential risks of methyl salicylate be considered in this request for an exemption from the requirement of a tolerance.

F. Safety

1. *U.S. population.* Methyl salicylate is the major component of a naturally occurring fragrant oil. The Flavor and Extract Manufacturer's Association (FEMA) has listed methyl salicylate on its GRAS list for use as a flavoring ingredient in foods and beverages. An FDA Advisory Review Panel has concluded that methyl salicylate is safe for use up to a concentration of 0.4 percent in the form of a rinse or mouthwash. The compound is extensively used in foods, beverages, pharmaceuticals, lotions and perfumes and has wide distribution in commerce with no reports of adverse outcomes associated with intended uses. The toxicity of the active ingredient (i.e., methyl salicylate) has been adequately and reliably characterized; it is summarized in this submission.

Based on this information, the Petitioner recommends that EPA conclude that there is reasonable certainty of no harm from aggregate exposures to pesticidal uses of methyl salicylate over a lifetime, and that no significant human health risks will result from such exposures. Accordingly, Petitioner recommends that EPA determine that exempting methyl salicylate from the requirement of a tolerance is safe.

2. *Infants and children.* Petitioner believes that EPA has sufficient data to address the issue of the potential additional sensitivity of infants and children to pesticidal methyl salicylate residues. Petitioner points to the long history of use of this substance as a flavoring in foods, its GRAS status, and the data submitted to the Agency in support of this petition. Reproductive and developmental effects have been found in toxicology studies for methyl salicylate; however, these adverse effects occurred at exposure levels that were also maternally toxic or at exposure levels higher than those producing other adverse effects following chronic exposure. Petitioner believes that infants and children are not differentially sensitive to methyl salicylate either by virtue of increased toxicological susceptibility or increased potential exposures. Therefore, Petitioner requests that EPA conclude that there is a reasonable certainty that no harm will result to infants and children from aggregate exposures to pesticidal chemical residues of methyl salicylate.

3. *Endocrine effects.* Methyl salicylate has been studied in several tests of reproductive and developmental effects, including multigenerational studies. In addition, the pathology of endocrine-sensitive tissues and organs has been evaluated following repeated (i.e., subchronic) and long-term (i.e., chronic) exposures. These studies are sufficient to detect endocrine effects. No such effects were reported in any of these studies. Therefore, Petitioner concludes that pesticidal uses of methyl salicylate are unlikely to have an effect in humans that is similar to an effect produced by a naturally occurring estrogen or other endocrine effects.

G. Analytical Method

Petitioner proposes that EPA establish this exemption from the requirement of a tolerance without any numerical limitation; therefore, analytical methods for residues of methyl salicylate would not be required for enforcement purposes. Petitioner is confident that, if present at all, residues of methyl salicylate that may be found in foods in contact with treated packaging materials will be minimal and considerably below the levels expected in existing GRAS uses of the active ingredient as a direct food flavoring ingredient. The Petitioner believes that an analytical method for the detection and measurement of methyl salicylate residues is not necessary to protect the public health or the environment. The natural occurrence of methyl salicylate in the environment (as oil of wintergreen), and its widespread use as a flavoring agent in the food supply preclude the need to quantify pesticidal methyl salicylate residues. Therefore, Petitioner has requested that EPA waive the requirement for an analytical method.

H. Existing Tolerances or Tolerance Exemptions

There are no known existing tolerances or tolerance exemptions for methyl salicylate; however, oil of wintergreen is exempt from the requirement of a tolerance when used in accordance with good agricultural practice as an inert (or occasionally active) ingredient in pesticide formulations applied to growing crops or to raw agricultural commodities (40 CFR 180.1001(c)).

I. Codex Maximum Residue Level

No known maximum residue limits (MRLs) have been established for methyl salicylate by the Codex Alimentarius Commission. (Sheryl Reilly)

[FR Doc. 97–15369 Filed 6–12–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–181047; FRL–5719–1]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to three States listed below. There were eight crisis exemptions initiated by various States. These exemptions, issued during the months of January, February, and March 1997, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific and crisis exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, CS 1B1, 2800 Jefferson Davis Highway, Arlington, VA (703–308–8417); e-mail: group.ermus@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Arizona Department of Agriculture withdrew their specific exemption request for the use of chlorfenapyr on lettuce to control the beet armyworm on December 27, 1996. (Pat Cimino)

2. California Department of Pesticide Regulation for the use of propamocarb hydrochloride on potatoes to control late blight; February 11, 1997, to February 10, 1998. (Libby Pemberton)

3. Texas Department of Agriculture for the use of propamocarb hydrochloride on potatoes to control late blight; February 11, 1997, to February 10, 1998. (Libby Pemberton)

Crisis exemptions were initiated by the:

1. Alabama Department of Agriculture and Industries on March 28, 1997, for the use of norflurazon on bermudagrass hay meadows to control weeds. The need for this program is expected to last until September 15, 1997. (Libby Pemberton)

2. California Department of Pesticide Regulation on February 5, 1997, for the use of imidacloprid on cucurbits to control the whitefly. The need for this program is expected to last until February 5, 1998. (Andrea Beard)

3. California Department of Pesticide Regulation on February 3, 1997, for the use of propiconazole on almonds to control anthracnose. The need for this program is expected to last until June 1, 1997. (Olga Odiott)

4. Idaho Department of Agriculture on March 3, 1997, for the use of pendimethalin on mint to control kochia and redroot pigweed. The need for this program is expected to last until December 31, 1997. (Steve Schaible)

5. Louisiana Department of Agriculture and Forestry on March 7, 1997, for the use of norflurazon on bermudagrass to control grassy weeds. The need for this program is expected to last until September 15, 1997. (Libby Pemberton)

6. Oregon Department of Agriculture on March 3, 1997, for the use of pendimethalin on mint to control kochia and redroot pigweed. This program is expected to last until December 31, 1997. (Steve Schaible)

7. Texas Department of Agriculture on January 27, 1997, for the use of imidacloprid on cucurbits to control the whitefly. This program is expected to

last until January 27, 1998. (Andrea Beard)

8. Washington Department of Agriculture on March 3, 1997, for the use of pendimethalin on mint to control kochia and redroot pigweed. This program is expected to last until November 1, 1997. (Steve Schaible)

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: June 3, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–15372 Filed 6–12–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

June 10, 1996.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Pub. L. 96–511. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Not withstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Judy Boley, Federal Communications Commission, (202) 418–0214.

Federal Communications Commission

OMB Control No.: 3060–0580.
Expiration Date: 06/30/2000.
Title: Section 76.504, Limits on Carriage of Vertically Integrated Programming.
Form No.: N/A.
Estimated Annual Burden: 22,500 total annual hours; 15 hours per respondent; 1,500 respondents.
Description: Section 76.504 requires cable operators to maintain records regarding the nature and extent of their attributable interests in all video programming services as well as information regarding their carriage of such vertically integrated video programming services on cable systems in which they also have an attributable interest. These records must be maintained in operator's public files for a period of 3 years.

OMB Control No.: 3060–0728.
Expiration Date: 05/31/2000.
Title: Supplemental Information Requesting Taxpayer Identifying Number for Debt Collection.
Form No.: N/A.
Estimated Annual Burden: 177,985 total annual hours; .017 hours per respondent; 10,469,716 respondents.
Description: Public Law 104–134, Chapter 10, Section 3100l, requires federal agencies to collect the taxpayer identifying number from any individual or firm doing business with it. In the case of an individual, that number is the person's social security number. In the case of a business, it is the employer identification number as assigned by the Internal Revenue Service. The information will be used by the FCC and the U.S. Department of Treasury for purposes of collecting and reporting on any delinquent amounts arising out of such person's relationship with the Government. The respondents are anyone doing business with the FCC.

OMB Control No.: 3060–0552.
Expiration Date: 05/31/2000.
Title: Sections 76.1003 and 76.1004, Adjudicatory Proceedings.
Form No.: N/A.
Estimated Annual Burden: 252 total annual hours; 1–20 hours per respondent; 24 respondents (12 complainants and 12 defendants).
Description: This information is used by Commission staff to resolve disputes alleging unfair methods of competition and deceptive practices where the purpose or effect of which is to hinder significantly or to prevent any multichannel video programming distributor from providing satellite cable programming or satellite broadcast programming to subscribers or consumers. Section 301(j) of the 1996 Act amends the restrictions in Section 628 to include common carriers and their affiliates that provide video programming.

OMB Control No.: 3060–0551.
Expiration Date: 05/31/2000.
Title: Section 76.1002, Specific Unfair Practices Prohibited.
Form No.: N/A.
Estimated Annual Burden: 676 total annual hours; 1–25 hours per respondent; 52 respondents (26 petitions and 26 oppositions).
Description: This information is used by Commission staff to determine on a case-by-case basis whether particular exclusive contracts for cable television programming comply with the statutory public interest standard of Section 19 of the Cable Television Consumer Protection and Competition Act of 1992 and Section 628 of the Communications Act of 1934, as amended. Section 301(j) of the 1996 Act amends the restrictions in Section 628 to include common carriers and their affiliates that provide video programming.

OMB Control No.: 3060–0104.
Expiration Date: 05/31/2000.
Title: Temporary Permit to Operate a Part 90 Radio Station.
Form No.: FCC Form 572.
Estimated Annual Burden: 200 total annual hours; 6 minutes per respondent; 2,000 respondents.
Description: Applicants eligible to hold a radio station authorization in the Private Land Mobile Radio Services may use this form to acquire a temporary permit to operate their radio station during processing of an application for license grant.

OMB Control No.: 3060–0765.
Expiration Date: 05/31/2000.
Title: Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems (Further Notice of Proposed Rulemaking).
Form No.: N/A.
Estimated Annual Burden: 56,250 total annual hours; 3 hours per respondent; 50,000 respondents.
Description: This proceeding will further establish a regulatory scheme for the common carrier paging (CCP) and private carrier paging (PCP) services which will promote efficient licensing and competition in the commercial mobile radio marketplace.

OMB Control No.: 3060–0776.
Expiration Date: 11/30/1997.
Title: Price Cap Performance Review for Local Exchange Carriers, Fourth Report and Order.
Form No.: N/A.
Estimated Annual Burden: 4,331 total annual hours; 61 hours per respondent; 71 respondents.
Description: Local exchange carriers (LECs) are required to make tariff filings to reflect changes in the price cap index (PCI) formula governing their access rate levels. This is necessary to ensure that interstate access rates that will take effect on July 1, 1997 are just and reasonable as required by Section 201 of the Communications Act of 1934, as amended. Also, the revisions will further pro-competitive, deregulatory policy established by Congress in the Telecommunications Act of 1996. The respondents that will submit data have all participated in this proceeding, and they keep the records necessary to comply with the data collection.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–15517 Filed 6–12–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 217–011435–003

Title: APL/TMM Space Charter Agreement

Parties:

American President Lines, Ltd.

Transportacion Maritima Mexicana, S.A. de C.V.

Synopsis: The proposed amendment would add a new subtrade between ports in California, and inland United States points via such ports, and ports and points in Mexico, Central America, and South America to the geographic scope of the Agreement. It would also permit the parties to allocate among themselves, or exclusively to one of them, any trade or subtrade of the trade or any space chartered under the Agreement. The parties have requested a shortened review period.

Agreement No.: 202–011579

Title: Inland Shipping Service Association

Parties:

A.P. Moller-Maersk Line

Crowley American Transport, Inc.

King Ocean Service

Seaboard Marine Ltd.

Sea-Land Service, Inc.

Dole Ocean Liner Express

Synopsis: The proposed Agreement would authorize the parties to discuss and agree upon rates, charges and practices relating to the inland portion of the carriage of cargo in intermodal equipment in the United States that is arriving from or destined to Central America, South America and the Caribbean Sea.

Agreement No.: 203–011580

Title: The ''8900'' Lines/Italia Discussion Agreement

Parties:

The ''8900'' Lines (FMC Agreement No. 202–008900)

Italia di Navigazione S.p.A.

Synopsis: The proposed Agreement would permit the parties to discuss and agree upon tariffs, rates, service items, rules, and service contracts in the trade between United States ports, and inland points via such ports, and ports and points in Bahrain, Iran, Iraq, Kuwait, Oman, Qatar, Saudi Arabia, the United Arab Emirates, Jordan, Yemen, Pakistan, Bangladesh, Sri Lanka, and India. Adherence to any agreement reached would be voluntary.

Dated: June 10, 1997.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 97–15613 Filed 6–12–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, June 18, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed 1998 Federal Reserve Bank budget objectives.
2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: June 11, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–15687 Filed 6–11–97; 10:02 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: Approximately 10:30 a.m., Wednesday, June 18, 1997, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve System compensation policy matters.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 11, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–15688 Filed 6–11–97; 10:02 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Notice of 60-Day Extension in Coment Period on Its Rule Governing Informal Dispute Settlement Mechanisms (''Rule 703'')

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (''the Commission'' or ''FTC'') has extended the date by which comments must be submitted concerning the review of its Rule governing Informal Dispute Settlement Mechanisms, 16 CFR part 703 (''Rule 703''). This notice informs prospective participants of the change and sets a new date of August 1, 1997, for the end of the comment period.

On April 2, 1997, the Commission published a request for comments on its review of Rule 703, which specifies the minimum standards which must be met by any informal dispute settlement mechanism that is incorporated into the written warranty of a consumer product and which the consumer must use prior to pursuing any legal remedies in court. By letters dated May 23, 1997, the American Automobile Manufacturers Association (''AAMA'') and the National Association of Attorneys General (''NAAG'') both requested an extension of time in order to compile cost and other data relating to the Rule's impact. In order to provide sufficient time for these and other interested parties to compile factual material in response to the request for comments, the Commission has extended until August 1, 1997, the date by which comments must be received.

DATES: Written comments will be received until the close of business on August 1, 1997.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, Room H–159, Sixth and Pennsylvania Ave., N.W., Washington, D.C. 20580. Comments should be identified as ''Rule 703—Comment.''

FOR FURTHER INFORMATION CONTACT: Carole I. Danielson (202) 326–3115, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: On April 2, 1997, the Commission requested comments about the overall costs and benefits of its Rule Governing Informal Dispute Settlement Procedures, 16 CFR Part 703 (''Rule 703'') and the overall regulatory and economic impact of the Rule as part of its systematic review of all current Commission regulations and guides. The request was made as part of the Commission's determination, as part of its oversight responsibilities, to review rules and guides periodically. Pursuant to these reviews, the Commission seeks information about the costs and benefits of the rules and guides under review, as well as their regulatory and economic impact. The information obtained will assist the Commission in identifying rules and guides that warrant modification or rescission. The comment period closes June 2, 1997.

The AAMA and NAAG have stated that they require additional time to complete compilation of the requested information and have requested that the comment period be extended in order to permit them to complete their data collection and response. Although the Commission is mindful of the need to deal with this matter expeditiously, the Commission is also aware that the issues raised are complex and believes that the enhancement of the record that will be achieved by extending the comment period outweighs any harm that might be caused by the delay.

Accordingly, the Commission has decided to extend the comment period to August 1, 1997. This extension will provide sufficient time for commenters to complete their data collection.

List of Subjects in 16 CFR Part 703

Warranties, trade practices.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 97–15525 Filed 6–12–97; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act or 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take an action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 05/12/97 AND 05/23/97

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Saad J. Nadhir, Boston Chicken, Inc., Boston Chicken, Inc	97–1979	05/12/97
The Garfield Weston Charitable Foundation, Robert Morgan, Morgan Mfg. Co., Inc. and Morgan Specialties, Inc	97–1983	05/14/97
IMC Global, Inc., Dan C. Hutson, Hutson Company, Inc	97–2045	05/14/97
Peer Pedersen, Boston Chicken, Inc., Boston Chicken, Inc	97–2046	05/14/97
Lyonnaise des Eaux, Compagnie de Suez, Compagnie de Suez	97–2050	05/14/97
E. Bronson Ingram Q-TIP Marital Trust, Intelligent Electronics, Inc., RND, Inc.; Intelligent Distribution Services, Inc	97–2060	05/14/97
Enterprise Partners III, L.P., Benjamin and Mary Frances Doskocil, Doskocil Manufacturing Company, Inc., Spectrum Polymers	97–2065	05/14/97
Claneil Enterprises, Inc., William K. Najjar DDS Trust, Ranir/DCP Corporation	97–1975	05/15/97
Viag AG, Th. Goldschmidt AG, Th. Goldschmidt AG	97–1996	05/15/97
Estate of Morris Belkin, BC Sugar Refinery, Limited, BC Sugar Refinery, Limited	97–2010	05/15/97
Green Equity Investors II, L.P., Leslie's Poolmart, Leslie's Poolmart	97–2013	05/15/97
Occidental Petroleum Corporation, Leslie's Poolmart, Leslie's Poolmart	97–2014	05/15/97
CKE Restaurants, Inc., Imasco Limited, Hardee's Food Systems, Inc	97–2025	05/15/97
Triax Midwest Associates, L.P., Triax Associates I, L.P., Triax Associates I, L.P	97–2027	05/15/97
Cameco Corporation, Compagnie Generale des Matieres Nucleaires (French S.A), Converse County Mining Venture	97–2031	05/15/97
Illinois Tool Works, Inc., Berwind Group Partners, The Meyercord Company	97–2035	05/15/97
BankBoston Corporation, Edward W. Nettles, Mid-West Wholesale Hardware Co	97–2036	05/15/97
Glazer's Wholesale Drug Company, Inc., American Spirit Beverage Company, American Spirit Beverage Company	97–2039	05/15/97
William E. Sagan, United HealthCare Corporation, United HealthCare Administrators, Inc	97–2043	05/15/97
IMC Global Inc., Dan C. Hutson II, Hutson Ag Services, Inc	97–2044	05/15/97
Trustees of the University of Pennsylvania, Phoenixville Health Care Corporation, Phoenix Hospital	97–1938	05/16/97
Sun Healthcare Group, Inc., Retirement Care Associates, Inc., Retirement Care Associates, Inc	97–1989	05/16/97
Smithfield Foods, Inc., Curly's Foods, Inc., Curly's Foods, Inc	97–1992	05/16/97
Rental Service Corporation, Thomas H. Foster, Brute Equipment, Inc. (dba Foxx Hy-Reach, Inc.)	97–2033	05/16/97

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 05/12/97 AND 05/23/97—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Allianz Aktiengesellschaft Holding, Crop Growers Corporation, Crop Growers Corporation	97–2034	05/16/97
Amtek, Inc., Technitrol, Inc., John Chatillon & Sons, Inc	97–2041	05/16/97
Jacor Communications, Inc., Secret Communications Limited Partnership, Secret Communications Limited Partnership	97–2061	05/16/97
The Fuji Bank, Limited, K–III Communications, The Katherine Gibbs Schools, Inc	97–2070	05/16/97
K–III Communications Corporation, Alberto Lopez, Park Avenue Publishing, Inc. & Go Lo Entertainment, inc	97–2071	05/16/97
KKR 1996 Fund L.P., Randall's Food Markets, Inc., Randall's Food Markets, Inc	97–2072	05/16/97
CHS Electronics, Inc., Enrique Dillon, Dinorall Corporation	97–2074	05/16/97
Castle Harlan Partners III, L.P., RAC Holdings Corp., Charles Brown's, Inc	97–2075	05/16/97
Robert Bosch Industrietreuhand KG, Texas Instruments Incorporated, Texas Instruments Incorporated (Semiconductor Division	97–2076	05/16/97
Amerada Hess Corporation, John R. Jaeb, Pick Kwik Holdings Incorporated	97–2079	05/16/97
Watsco, Inc., Weathertrol Supply Company, Weathertrol Supply Company	97–2081	05/16/97
Dean Foods Company, Campbell Soup Company, Campbell Soup Company	97–2082	05/16/97
Theodore Baum, Booth American Company, Booth Communications Carolinas Assets, Inc	97–2083	05/16/97
Stewart A. and Lynda Rae Resnick (Husband & Wife), James F. and Martha Jean Swindle (Husband and Wife), National Florist Directory, Inc. (d/b/a Redbook Florist)	97–2086	05/16/97
TPG Partners II, L.P., Belden & Blake Corporation, Belden & Blake Corporation	97–2088	05/16/97
Triax Midwest Associates, L.P., Cable TV Fund 14–A, Ltd., Cable TV Fund 14–A, Ltd	97–2090	05/16/97
United News & Media plc, Hollinger, Inc., PR News Service	97–2099	05/16/97
Asbestos Settlement Trust, Jasper Corp., Jim Walter Corporation	97–2100	05/16/97
United News Media plc, Tribune Company, PR News Service	97–2103	05/16/97
Mr. O. Gene Bicknell, PepsiCo, Inc., Pizza Hut, Inc	97–2106	05/16/97
McCown DeLeeuw & Co., II, L.P., Grizzard Advertising Incorporated, Grizzard Advertising Incorporated	97–2107	05/16/97
Bridge Street Fund 1994, L.P., Polo Ralph Lauren Corporation, Polo Ralph Lauren Corporation	97–2109	05/16/97
GS Capital Partners, L.P., Polo Ralph Lauren Corporation, Polo Ralph Lauren Corporation	97–2110	05/16/97
Stone Street Fund 1994, L.P., Polo Ralph Lauren Corporation, Polo Ralph Lauren Corporation	97–2111	05/16/97
Ralph Lauren, Polo Ralph Lauren Corporation, Polo Ralph Lauren Corporation	97–2112	05/16/97
Alfred McAlpine plc, Raine plc, Raine plc	97–2113	05/16/97
Kelso Investment Associates V, L.P., Cygnus Publishing, Inc., Cygnus Publishing, Inc	97–2121	05/16/97
Kelso Investment Associates V, L.P., PTN Holding Corporation, PTN Holding Corporation	97–2122	05/16/97
Incentive AB, Vivra Incorporated, Vivra Incorporated	97–2123	05/16/97
United Auto Group, Inc., Gene Reed, Jr., Gene Reed Chevrolet, Inc.; Michael Chevrolet-Oldsmobile	97–2128	05/16/97
ITEQ, Inc., Exell, Inc., Exell, Inc	97–2087	05/19/97
Rohm and Haas Company, William Budinger, Rodel, Inc	97–2105	05/19/97
MBNA Corporation, CNB Bancshares, Inc., Citizens Nat. Bank of Evansville & Citizens Nat.—Ill	97–2108	05/19/97
Gedalio Grinberg, Sara Lee Corporation, Sara Lee Corporation	97–2130	05/19/97
Newell Co., Cooper Industries, Inc., Kirsch, Inc	97–1145	05/20/97
Evergreen Media Corporation, Hicks, Muse, Tate & Furst Equity Funnd II, L.P., Chancellor Broadcasting Company	97–2001	05/21/97
Hicks, Muse, Tate & Furst Equity Fund II, L.P., Evergreen Media Corporation, Evergreen Media Corporation	97–2002	05/21/97
Joseph S. Schuchert, Jr., American Standard Companies, Inc., American Standard Companies, Inc	97–2058	05/21/97
Roper Industries, Inc., Petrotech, Inc., Petrotech, Inc	97–2019	05/22/97
Extendicare, Inc., Edward A. Martell, Great Trail Care Center, Inc	97–2062	05/22/97
Superior Services, Inc., Cash Family Limited Partnership, Resource Recovery Transfer & Transporation, Inc	97–2096	05/22/97
USA Waste Services, Inc., E. Thomas Harvey, III, Harvey & Harvey, Inc., Harvey & Harvey of Delmar, Inc	97–2115	05/22/97
A.M. Castle & Co., Keystone Tube Company, Keystone Tube Company	97–1978	05/23/97
KeyCorp, Leasetec Corporation, Leasetec Corporation	97–2040	05/23/97
Vesta Insurance Group, Inc., Anthem Insurance Companies, Inc., Anthem Casualty Insurance Company; The Shelby Insurance	97–2080	05/23/97

FOR FURTHER INFORMATION CONTACT:

Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 97–15526 Filed 6–12–97; 8:45 am]

BILLING CODE 6570–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement 750]

HIV and STD Intervention Research for Young Men in Prison

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1997 funds for a cooperative agreement program to stimulate the development of innovative science-based models that assist local communities in the prevention of HIV/STD infection and transmission among young men in prison who are ready to return to their communities.

CDC is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2000,'' a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area Human Immunodeficiency Virus (HIV) Infection. (For ordering a copy of ''Healthy People 2000,'' see the section **Where to Obtain Additional Information**.)

Authority

This program is authorized under Sections 301 and 317(k)(2), of the Public Health Service Act (42 U.S.C. 241 and 247b(k)(2) as amended.

Smoke-Free Workplace

CDC strongly encourages all recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Applications may be submitted by public and private, nonprofit and for-profit organizations, and governments and their agencies. Thus, universities, colleges, research institutes, community-based organizations, hospitals, other public and private organizations, State and local health departments or their bona fide agents or instrumentalities, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations, and small, racial-ethnic or women-owned businesses are eligible to apply.

Availability of Funds

Approximately $1,200,000 is available in FY 1997 to fund four awards. It is expected that the average award will range from $275,000 to $325,000. The awards are expected to begin on or about September 30, 1997, and will be made for a 12-month budget period within a project period of up to five years. Continuation awards will be made on the basis of satisfactory progress and the availability of funds. Funding estimates may vary and are subject to change. Applications requesting greater than $325,000 will not be considered for funding.

Use of Funds

Restrictions on Lobbying

Applicants should be aware of restrictions on the use of HHS funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. Section 1352 (which has been in effect since December 23, 1989), recipients (and their subtier contractors) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, the FY 1997 HHS Appropriations Act, which became effective October 1, 1996, expressly prohibits the use of 1997 appropriated funds for indirect or ‘‘grass roots’’ lobbying efforts that are designed to support or defeat legislation pending before State legislatures. This new law, Section 503 of Pub. L. No. 104–208, provides as follows:

> Sec. 503(a) No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress, * * * except in presentation to the Congress or any State legislative body itself.
>
> (b) No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1997, as enacted by the Omnibus Consolidated Appropriations Act, 1997, Division A, Title I, Section 101(e), Pub. L. No. 104–208 (September 30, 1996).

Background: HIV/AIDS in the U.S. Prison Population

There are over 6 million adults or 2.6% of the total adult U.S. population under some form of correctional custody on any given day. A recent national survey of routine STD testing in correctional facilities found positivity rates for syphilis among inmates that range from 0% to 17% and positivity rates for gonorrhea ranging from 0% to 32.5%. The prevalence of AIDS among inmates is 5.2 per thousand, or nearly six times the total U.S. adult population rate of 0.9 per thousand. HIV seroprevalence rates among prison populations vary by region, ranging from 2% to as high as 26%. Approximately 93% of all inmate deaths from AIDS are among men. Compared to men in the general population, men entering prisons typically have substantially higher rates of STDs, HIV infection and risk behaviors for HIV infection such as injecting drug use, sexual contact with injecting drug using partners, homemade tattoos and other blood exposures.

In the United States, injection drug users represent about 25% of all AIDS cases and 42% of cases acquired through heterosexual transmission have been attributed to sexual contact with an injection drug user. In 1991 there were over 177,750 injection drug users in State prisons alone. Nationwide, approximately 70% of inmates have a history of injection drug use. It is obvious that prisons are important settings for reaching men who are at increased risk for HIV infection with risk reduction information.

Unfortunately, a recent survey of prison administrators found that from 1992 to 1994, the number of prisons that provided instructor-led HIV educational programs for inmates declined. In addition, the number of prison systems that made HIV education available to inmates through videos and other audiovisual materials also declined. In spite of the tremendous increase in the numbers of young men who are incarcerated, very few prevention programs have been specifically designed and evaluated for young men in prison.

Prison populations provide a means of accessing large numbers of young men who have engaged in high risk behaviors and are likely to do so again upon their release from prison. Without support and assistance in making the transition from prison life to a stable life back in their communities, it is probable that inmates may relapse to drug use and risky sexual behaviors. Young male inmates may be more readily encouraged to alter their risky behaviors compared to older inmates who are more likely to have longer histories of risky behavior and because of longer sentences, will have less opportunity to practice risk reduction behaviors. According to national figures most inmates remain incarcerated for an average of 18 months. An intervention that begins to address HIV and STD prevention immediately prior to young men’s release from prison and that continues to provide ongoing intervention and support for behavior change following release is a much needed model. Therefore, it is vital that an HIV and STD prevention intervention for this population be designed, tested and evaluated in order to assist communities in addressing the unmet risk-reduction needs of this population.

Purpose

The objective of this announcement is to advance the field of HIV-prevention science so that local communities will have available to them a range of scientifically sound intervention strategies to use in their prevention programs for young men (ages 18 to 25) in prisons. To reach this goal it is essential that programs work with communities to accomplish this research so that interventions will be feasible and acceptable to the community. A critical goal of this research is to connect local researchers with community and prison-based prevention programs in order to build the capacity of local communities to sustain intervention work after the research is completed.

Behavioral intervention research of this type often involves three distinct phases. The first phase involves the collection of qualitative and quantitative data that leads to a better understanding of the study population, its risk-related practices, as well as barriers and facilitators to the adoption and maintenance of reduced behavioral risk practices. In the second phase, this information is used to develop an intervention strategy, which is then piloted on a small scale to determine the feasibility and acceptability of the intervention. In the third phase, a refined intervention model is tested to evaluate its ability to influence risk-related practices and attitudes. This announcement is designed to support local research efforts in each of these three phases.

Facilitating participation in the development of a common cross-site research protocol is an essential objective of this announcement. The collection of comparable data across sites provides a number of significant advantages with regard to advancing the field of intervention research. First, the prevalence of risk-related practices and beliefs can be systematically evaluated across different populations and regions of the country. Second, collection of comparable process and outcome evaluation data allows the relative effectiveness of different intervention strategies to be assessed. Third, the inability of a single-site project to recruit sufficient participants to reliably measure biological outcome measures such as STD and HIV incidence can be overcome with a multi-site effort.

Program Requirements

To achieve the purpose of this project, the recipient will be responsible for the activities under A. (Recipient Activities). The CDC will provide assistance with the activities listed under B. (CDC Activities).

A. Recipient Activities

To achieve the objectives of this announcement, it is recommended that each cooperative agreement recipient form a multi-disciplinary research team, led by behavioral and social scientists skilled in conducting intervention research. This team will guide the implementation of research and intervention protocols that will be developed collaboratively by the cooperative agreement recipients. To ensure the feasibility and acceptability of the intervention strategy in the local community, the research team should develop formal mechanisms to solicit on-going input from relevant stakeholders such as inmate representatives, corrections staff, staff from participating community based organizations, and data analysts.

The multi-disciplinary research team will:

1. Collaborate with other cooperative agreement recipients in developing a common research protocol.
2. Following the common study protocol, conduct formative research to describe the risk behaviors of the study population as well as psychosocial and other factors that influence their HIV and STD risk behavior.
3. Following the common study protocol, pilot test and rigorously evaluate the impact of the intervention developed earlier in the project.
4. Collaborate with other cooperative agreement recipients in data analysis and dissemination of research findings so that they are accessible and usable to local communities and other researchers.

Given the collaborative nature of this effort, it is anticipated that key staff from each cooperative agreement recipient's agency will attend four meetings of all the cooperative agreement recipients each year and participate in regular telephone conference calls throughout the duration of the project.

B. CDC Activities

CDC staff will collaborate with cooperative agreement recipients, providing guidance and coordination throughout the duration of the project. Activities that will be conducted by the CDC include:

1. Participate in developing research protocols including data collection procedures and instruments;
2. Assist in the scientific and operational conduct of the research project to ensure that HIV prevention science and community needs are met;
3. Coordinate cross-site data aggregation and analyses to ensure that HIV prevention science and community needs are met.
4. Participate in the preparation of study results for publication.

It is anticipated that within the first 3 months of the cooperative agreement, all recipients will complete the common research protocol and in the next 3 months pilot test its components. Around the 18th month of the project, recipients will agree on the essential components of the common intervention protocol for pilot testing. Following the pilot testing, the feasibility of implementing a rigorous research evaluation of the intervention will be assessed. Intervention studies that are scientifically rigorous, acceptable to the study population, and likely to lead to reductions in HIV and STD risk will move ahead to the intervention trial phase.

Technical Reporting Requirements

An original and two copies of semiannual progress reports are required. Time lines for the quarterly reports will be established at the time of award. Final financial status and performance reports are required no later than 90 days after the end of the project period. All reports are to be submitted to the Grants Management Branch, Procurement and Grants Office, CDC.

Application Content

Applications must be developed in accordance with PHS Form 398 (OMB Number 0925–0001), information contained in the program announcement and the instructions provided below. Applicants are required to submit an original and two copies of the application. All page limits specified in the PHS 398 application kit must be adhered to with the exception that sections a-d of the Research Plan must not exceed 15 pages in length. Material in appendices should be one-sided only.

The following information should be addressed within the Research Plan section of the application narrative:

1. Population and Facility

a. Demonstrate familiarity with HIV/STD issues faced by young men making the transition back to their communities and identify the factors associated with the transmission of HIV/STD within the proposed study population;

b. Describe the prison facility and the characteristics of the participants who will be recruited, including the total number of incarcerated young men aged 18–25. Describe with regard to men ages 18 to 25: overall number of inmates released from prison each month for the past year, number of men on parole, number of violent and non-violent inmates, rates of recidivism, race/ethnicity data, number of men tested for

HIV, the percentage of young men who are HIV positive, the percentage of new inmates who test positive for an STD and the percentage that are diagnosed with an STD during the period of incarceration;

c. Describe the plans to involve young men, correctional staff, and service providers in the development of research and intervention activities;

d. Include procedures for obtaining informed consent, Institutional Review Board (IRB) clearance, and maintaining participant confidentiality;

e. Describe ongoing HIV/STD education and prevention activities with this population within the prison facility and in the community;

f. Describe linkages between the prison facility, local community health department resources, and community based organizations. Include a list with descriptions of referral organizations and their services. Also enclose letters of support from each organization that are specific in identifying the services that they will provide;

g. Include a letter of support from the Warden and the Medical Director of the participating correctional facilities that states they will participate in the project and support the research and intervention activities.

2. Formative Research Plan

a. Describe the plan to conduct formative research. Discuss what factors will be examined and the rationale for studying these factors based on the scientific literature;

b. Provide a statement of the willingness of the research team to work collaboratively with the other cooperative agreement recipients in developing a common research protocol and to disseminate study findings;

c. Describe plans for following participants for a minimum of six months following their release from prison; and,

d. Describe the methods for collecting and analyzing qualitative and quantitative data.

3. Research and Intervention Capability of Applicant

a. Describe the professional training and relevant experience of the research team;

b. Provide descriptions and major findings of HIV-related research and behavioral intervention studies that have been conducted by members of the research team;

c. Include a table of current and previous relevant research projects, their principal investigators, status, sources and levels of funding; and

d. Include in the appendix, the curriculum vitae for key staff members as well as memoranda of agreement that document activities to be performed by any external experts, consultants, or collaborating agencies under the cooperative agreement.

4. Staffing, Facilities, and Time Line

a. Explain the proposed staffing structure (positions/titles), the percentage of time each staff member commits to this study and other projects, and the division of duties and responsibilities for the project;

b. Identify and describe the key roles of behavioral scientists and other staff essential to the conduct and the completion of the project;

c. Describe the duties and responsibilities of project personnel to conduct project oversight and data management;

d. Describe the existing facilities, equipment, computer software, data processing capacity, and describe the procedures to ensure the security of research data; and,

e. Provide a time line for the completion of the proposed research.

5. Budget

Provide a detailed, line-item budget for the project and a budget narrative that justifies each line-item.

Evaluation Criteria

Applications that meet the eligibility requirements will be reviewed and evaluated according to the following criteria:

1. Familiarity With HIV/AIDS and STD Risk Behaviors of Young Men. (20 Points)

a. Extent of applicant's knowledge of HIV/STD issues faced by young men ready for release to their communities and familiarity with the relevant research;

b. Thoroughness of the description of risk behaviors that are associated with the transmission of HIV/STD in the proposed study population;

c. Inclusion of a description of the facility and the ability to show the availability of sufficient numbers of participants to achieve the study objectives, including the total number of incarcerated young men aged 18–25, described in terms of the following: overall number of inmates released each month for the past year, number of men on parole, number of violent and non-violent inmates, rates of recidivism, race/ethnicity data, number of men tested for HIV, the percentage that are positive in the institution annually, the percentage of new inmates who test positive for an STD and the percentage that are diagnosed with an STD during the period of incarceration;

d. Quality of the plan to involve young men, correctional staff, and service providers in the development of research and intervention activities;

e. Adequacy of the procedures for obtaining informed consent, IRB clearance and maintaining participant confidentiality;

f. Documentation and coordination of any ongoing HIV/STD education and prevention activities with this population within the prison facility and in the community;

g. Adequacy of the linkages with local community health department resources, and community based organizations. Presence of list of referral organizations and their services. Presence of letters of support from each organization specifying the service that they will provide; and,

h. Inclusion of the letter of support from the Warden and the Medical Director of the selected correctional facility stating their willingness to participate in the project and to actively support the research and intervention activities.

2. Formative Research Plan (30 Points)

a. Thoroughness of the applicant's understanding of the scientific literature related to HIV/STD risk and risk reduction with the target population;

b. Quality of the plan to conduct formative research that will yield information relevant to the development of HIV/STD risk reduction interventions for young men who are ready for release;

c. Presence of a statement showing the willingness of the research team to work collaboratively with the CDC and the other cooperative agreement recipients in developing a common research protocol and to disseminate study findings;

d. The proposed plan for the inclusion of racial and ethnic minority populations for appropriate representation and the proposed justification when representation is limited or absent;

e. Adequacy of plans to test the feasibility of following participants for six months following their release from prison; and,

f. Quality of the methods described for collecting and analyzing qualitative and quantitative data.

3. Research and Intervention Capability (35 Points)

a. Quality of the professional training and relevant research experience of the research team;

b. Relevance and quality of HIV-related research and behavioral intervention studies that have been conducted by members of the research team;

c. Inclusion of a table of current and previous relevant research projects, their principal investigators, status, sources and levels of funding; and,

d. Completeness of requested materials in the appendix, the curriculum vitae for key staff members as well as memoranda of agreement that clearly and specifically document activities to be performed by any external experts, consultants, or collaborating agencies under the cooperative agreement.

4. Staffing, Facilities, and Time Line (15 Points)

a. Adequacy of the proposed staffing structure (positions/titles), the percentage of time each staff member commits to this and other projects, and the division of duties and responsibilities for the project;

b. Clarity and appropriateness of the key roles of behavioral scientists and other staff essential to the conduct and the completion of the project;

c. Clarity of the described duties and responsibilities of project personnel to conduct project oversight and data management;

d. Adequacy of the existing facilities, equipment, computer software, data processing capacity, and the procedures to ensure the security of research data; and,

e. Completeness and reasonableness of time line for the proposed research.

5. Budget (Not Scored)

Extent to which the budget is reasonable, itemized, clearly justified, and consistent with the intended use of the funds.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should send them to Van Malone, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E15, Atlanta, GA 30305, no later than 30 days after the application deadline. The granting agency does not guarantee to ‘‘accommodate or explain’’ for State process recommendations it receives after that date.

Indian tribes are strongly encouraged to request tribal government review of the proposed application. If tribal governments have any tribal process recommendations on applications submitted to the CDC, they should forward them to Van Malone, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E15, Atlanta, GA 30305. This should be done no later than 30 days after the application deadline date. The granting agency does not guarantee to ‘‘accommodate or explain’’ for tribal process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is subject to the Public Health System Reporting Requirements. Under these requirements, all community-based nongovernmental applicants must prepare and submit the items identified below to the head of the appropriate State and/or local health department agency(s) in the program area(s) that may be impacted by the proposed project no later than the receipt date of the Federal application. The appropriate State and/or local health agency is determined by the applicant. The following information must be provided:

A. A copy of the face page of the application (SF 424).

B. A summary of the project that should be titled ‘‘Public Health System Impact Statement’’ (PHSIS), not exceed one page, and include the following:

1. A description of the population to be served

2. A summary of the services to be provided; and,

3. A description of the coordination plans with the appropriate State and/or local health agencies.

If the State and/or local health official should desire a copy of the entire application, it may be obtained from the State Single Point of Contact (SPOC) or directly from the applicant.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.941.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committees. In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If any American Indian community is involved, its tribal government must also approve that portion of the project applicable to it. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Racial and Ethnic Minorities

It is the policy of the Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) to ensure that individuals of the various racial and ethnic groups will be included in CDC/ATSDR-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian, Alaskan Native, Asian, Pacific Islander, Black and Hispanic. Applicants shall ensure that racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, pages 47947–47951, and dated September 15, 1995.

HIV/AIDS Requirements

Recipients must comply with the document entitled Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions (June 1992), a copy of which is included in the application kit. At least one member of the program review panel must be an employee (or designated representative) of the health department consistent with the Content guidelines. The names of the review panel members must be listed on the Assurance of Compliance for CDC 0.1113, which is also included in the application kit. The recipient must submit, an attachment to the quarterly summaries, the program review panel's report that all material have been reviewed and approved.

Application Submission and Deadlines

1. Preapplication Letter of Intent

A non-binding letter of intent-to-apply is required from potential applicants. An original and two copies of the letter should be submitted to the Grants Management Branch, CDC (see ''Applications'' for the address). It should be postmarked no later than July 14, 1997. The letter should identify the announcement number, name of principal investigator, and specify the activity(ies) to be addressed by the proposed project. The letter of intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently, and will ensure that each applicant receives timely and relevant information prior to application submission.

2. Applications

An original and two copies of the application PHS Form 398 (OMB Number 0925–0001) must be submitted to Van Malone, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–15, Atlanta, GA 30305, on or before August 7, 1997.

3. Deadlines

a. Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date; or,

(2) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

b. Applications that do not meet the criteria in 3.a.(1) or 3.a.(2) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description, information on application procedures, an application package and business management technical assistance may be obtained from Van Malone, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–15, Atlanta, GA 30305, telephone (404) 842–6575, email: vxm7@cdc.gov.

Programmatic technical assistance may be obtained from Robert Kohmescher, Division of HIV/AIDS Prevention, National Center for HIV/STD/TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E–44, Atlanta, GA 30333, telephone (404) 639–8302, email: rnk1@cdc.gov.

Please refer to Announcement 750 when requesting information and submitting an application. Potential applicants may obtain a copy of ''Healthy People 2000,'' (Full Report, Stock No. 017–001–00474–0) or ''Healthy People 2000,'' (Summary Report, Stock No. 017–001–00473–1) referenced in the **Introduction**, through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Internet Home Page

The announcement will be available on one of two Internet sites on the publication date: CDC's home page at http://www.cdc.gov, or at the Government Printing Office home page (including free access to the **Federal Register**) at http://www.access.gpo.gov.

Dated: June 9, 1997.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

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BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement 751]

Improving Sampling and Sexual Behavior Measurement Methods in HIV Behavioral Intervention Research

Introduction

The Centers for Disease Control and Prevention (CDC) announce the availability of fiscal year (FY) 1997 funds for a cooperative agreement program to support innovative research to improve the scientific rigor and credibility in two areas fundamental to the design and assessment of Human Immunodeficiency Virus (HIV) behavioral risk reduction interventions with populations at high risk for HIV infection and transmission. This announcement provides funds for two types of activities that will supplement or strengthen on-going behavioral intervention studies designed to prevent HIV infection and transmission: Activity 1: Obtaining representative samples of populations at high risk for HIV infection and transmission, and Activity 2: Minimizing errors in measuring reported sexual behaviors of persons participating in intervention studies with populations at high risk for HIV infection and transmission.

CDC is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2000,'' a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Human Immunodeficiency Virus (HIV) Infection. (For ordering a copy of ''Healthy People 2000,'' see the section **Where To Obtain Additional Information**.)

Authority

This program is authorized under sections 301 and 317 (k)(2), of the Public Health Service Act [42 U.S.C. 241 and 247b(k)(2)], as amended.

Smoke-Free Workplace

CDC strongly encourages all recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

All Activity 1 and Activity 2 applications must meet the eligibility criteria described in this section:

1. Applications can be submitted by public and private, nonprofit organizations and governments and their agencies. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, State and local health departments or their bona fide agents or instrumentalities, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations, and small, minority-and women-owned non-profit businesses are eligible to apply.

2. Eligible applicants may submit applications for either or both Activity 1 (sampling) and Activity 2 (sexual behavior measurement). If applications are submitted for both types of Activities, the applicant must submit them as separate stand-alone applications. All applicants must explicitly state the Activity type of their application following the application's title listed on the application cover page, and again following the title listed at the top of the first page of the proposal's Abstract (see **Application Content** section of this announcement for further details).

3. For either Activity 1 or 2, applicants must have access to data collected as part of an on-going HIV behavioral intervention research study in the United States or its territories; such studies should be designed to develop and test interventions to reduce HIV risk behaviors (especially sexual) among populations at high risk for HIV infection or transmission.

4. Organizations described in section 501(c)(4) of the Internal Revenue code of 1986 that engage in lobbying are not eligible to receive Federal grant or cooperative agreement funds.

Availability of Funds

Approximately $600,000 is available in FY 1997 to fund a total of approximately six awards. Applications under Activity 1 and 2 will be ranked separately. CDC anticipates making at least one award under Activity 1, and at least one award under Activity 2. It is expected that the average award amount will range from $80,000 to $120,000 covering the entire award period, depending on the number and types of applications proposed. Awards are expected to be made before September 30, 1997, and will cover a 12-month budget period within a project period of one year. These funding estimates may vary and are subject to change based on availability of funds. Applications requesting greater than $120,000 for their total budget will not be considered for review.

Cooperative agreement funds awarded under this announcement are to be used to supplement and strengthen the sampling or sexual behavior measurement methods being used as part of on-going HIV behavioral intervention studies with high risk populations in the United States or its territories. Except as they relate directly to the purposes of this announcement, these funds are NOT TO BE USED for supporting the general costs of implementing an on-going HIV behavioral intervention, starting a new HIV behavioral intervention, or for any other purpose not covered under the intent of this announcement. Moreover, these funds are not to be used for the purchase of furniture, software, computers, rental of facilities, or equipment.

Use of Funds

Restrictions on Lobbying

Applicants should be aware of restrictions on the use of HHS funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. Section 1352 (which has been in effect since December 23, 1989), recipients (and their subtier contractors) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, the FY 1997 HHS Appropriations Act, which became effective October 1, 1996, expressly prohibits the use of 1997 appropriated funds for indirect or ''grass roots'' lobbying efforts that are designed to support or defeat legislation pending before State legislatures. This new law, Section 503 of Pub. L. No. 104–208, provides as follows:

Sec. 503(a) No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress, * * * except in presentation to the Congress or any State legislative body itself.

(b) No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1997, as enacted by the Omnibus Consolidated Appropriations Act, 1997, Division A, Title I, Section 101(e), Pub. L. No. 104–208 (September 30, 1996).

Background

Regardless of advances in medical treatment of HIV/AIDS, success in stopping the spread of the disease will rely heavily upon the use of effective HIV behavioral risk reduction interventions. In assessing whether an intervention approach works, previous studies have shown the need for accurate measurement of sexual behaviors and their correlates, e.g., correct condom use, the number and frequency of sexual partners, and other related variables. Similarly, earlier research has indicated the need to test interventions with a sample of persons that is representative of the wider target population.

Representative samples are essential for knowing the generalizability of the results obtained from efficacy or effectiveness intervention studies. However, it is often difficult or impractical to select a true random sample of high HIV risk populations.

Researchers frequently rely on combinations of probability and non-probability sampling methods to select their samples, e.g., street intercept methods, venue sampling, snowball techniques, recruitment from STD clinics or community based service organizations. While these methods are often viewed as sufficient to identify and recruit a group of persons at risk for HIV, the methods might yield unrepresentative samples. Moreover, even representative sampling protocols are not always implemented as planned when identifying and selecting potential study participants. Differential drop-out of sampled persons can also bias research findings.

Limits on the generalizability of a HIV behavioral intervention study's findings makes it difficult for public health program managers to decide whether the intervention would be a useful tool for stopping the spread of HIV in their jurisdictions. Additional work is needed to develop ways to improve sampling methods used in HIV behavioral intervention research.

HIV intervention researchers must also obtain accurate data on study participants' sexual behaviors. Because of their highly sensitive and private nature, measurement of HIV-relevant sexual behaviors relies heavily upon self-reported information provided by participants in HIV prevention intervention studies. It is often difficult to ensure that responses to sexual behavior questions are valid, i.e., true reflections of a respondent's sexual behaviors.

In the past, different modes of sexual behavior data collection have been used, e.g., face-to-face interviews, self-administered questionnaires, audio- and telephone audio-computer assisted interviews. Efforts have been made to enhance reliability and validity of data collected, e.g., altering question order and wording, matching interviewer and respondent social and cultural backgrounds, using various recall periods, and memory assistance techniques. Other efforts have included test-retest with the same instrument, comparison of results using different data collection modes, comparison of a respondent's sexual behaviors with reports elicited from their sexual partners, and comparison of reported sexual behaviors with STD clinic medical records.

However, in spite of this past research experience, there is no established ''gold standard'' approach for measuring and ensuring the accuracy of self-reported sexual behaviors. To the greatest extent possible, it is essential for researchers to minimize sexual behavior measurement errors and maximize replicability or reliability of their findings.

Purpose

The purpose of this announcement is to fund innovative and scientifically sound research projects that will enhance the sampling (Activity 1) and sexual behavior measurement (Activity 2) methods used during on-going HIV behavioral intervention studies among populations at high risk for HIV infection and transmission. This includes sampling and sexual behavior measurement methods used during formative research phases preceding the development of behavioral interventions, as well as the efficacy or effectiveness study phases of interventions designed to prevent, modify, or decrease HIV sexual risk behaviors of populations at high risk for HIV infection and transmission.

This announcement solicits proposals to fund research for improving the sampling of populations and the measurement of sexual behaviors relevant to HIV behavioral intervention research with populations at high risk for HIV infection and transmission. In addition to evaluating the strength of the Activity 1 and Activity 2 applications submitted under this announcement, CDC may give priority to funding highly qualified applications that address a diverse range of target populations engaged in high HIV risk behaviors. Examples of these populations might include: heterosexual women, men who have sex with men, drug-using populations, adolescents or youth, or STD clinic patients. In addition, CDC welcomes applications pertaining to other groups that may be at high risk of HIV infection and transmission but which have received comparatively little HIV intervention research attention in the past, e.g., incarcerated or formerly incarcerated populations, hearing or visually impaired groups, bisexual women, severely mentally ill, homeless persons, or others. Regardless of the study's target population, awards will only be made to applicants that submit high quality applications, as assessed according to the ''EVALUATION CRITERIA'' and other instructions listed in this announcement.

This announcement provides funds for two types of activities: *Activity 1 (sampling)*—HIV behavioral intervention research to: (1) compare and contrast innovative methods to obtain representative samples of populations at high risk for HIV infection and transmission, (2) examine the extent of statistical representativeness and generalizability of the data collected from the selected samples, and/or (3) develop and test methods to improve sampling in future HIV behavioral studies with high risk populations; Activity 2 (sexual behavior measurement)—HIV behavioral intervention research to: (1) compare and contrast innovative methods to elicit respondent-reported sexual behavior data relevant to the risk of HIV infection and transmission, (2) examine the extent of reliability or validity of sexual behavior data obtained through use of different data collection methods, (3) identify specific sources for and magnitude of measurement error in obtaining sexual behavior data among different groups of persons at high risk for HIV infection and transmission, and/or (4) develop and test methods to improve the accuracy of reported sexual behavior data in future HIV behavioral studies with high risk populations.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed below under section ''RECIPIENT ACTIVITIES'' and CDC will be responsible for the activities listed under section ''CDC ACTIVITIES.''

A. Recipient Activities

1. Design sampling or sexual behavior measurement methods. The recipient will design innovative and feasible sampling or sexual behavior measurement methods that will supplement and strengthen the on-going HIV intervention study.

2. Collect and prepare data for analysis. The recipient will collect, code, enter, clean, or otherwise prepare all data to be obtained or used in meeting the objectives of the proposed work.

3. Ensure completion of the project by sustaining capability. Throughout the course of the project, the recipient has the responsibility to sustain the level of capability which was presented in their application, particularly:

a. The scientific skills to understand and conduct the sampling or sexual behavior measurement research, to conduct relevant analyses, and to assess the degree and extent of generalizability of the findings relevant to the objectives described in Activity 1 or Activity 2 sections of this announcement;

b. Adequate and appropriate technical and support services for the proposed project;

c. Adequate research facilities, computer, software, and other project resources or management systems needed for completing the proposed work; and,

d. Plan and capacity for storing the data securely and maintaining confidentiality. All applicants are fully responsible for ensuring that all appropriate human subjects review procedures have been followed.

4. Conduct the proposed research. The recipient will conduct all research-related activities pertaining to the proposed work. This includes: project design; data collection and preparation; data coding and analysis; project management and reporting; and preparation of materials for human subjects review committees and securing all necessary permissions to implement the project. All work must be carried out by the applicant in a scientifically acceptable, legal, and ethical manner.

5. Attend three CDC-organized meetings in Atlanta, GA. After receipt of their award, all recipients will attend three joint meetings in Atlanta, GA. For all meetings associated with this project, recipients are fully responsible for making all necessary travel

arrangements; applicants should plan their budgets accordingly.

Meeting 1: CDC anticipates that the first three-day meeting will take place in October or November 1997. At the first meeting, all recipients will make formal presentations describing their proposed work, and will participate in joint discussions with other recipients, CDC staff, and other individuals that may attend the meeting. Based on the meeting, recipients may choose to revise their study protocol.

Meeting 2: Toward the middle of the funding period, a one-day, mid-term meeting will be held, probably in March or April 1998. The purpose of the second meeting will be to share and discuss work progress and next steps. At the time of the second meeting, each recipient will also submit to CDC copies of a written mid-project progress report.

Meeting 3: Toward the end of the 12-month budget period, all applicants will attend a final three-day meeting. CDC anticipates this meeting will take place in August or September 1998. At the final meeting, each award recipient will make formal presentations describing the final results of their research activities related to this project. Subsequent to the meeting, each applicant will prepare their final written project report (see TECHNICAL REPORTING REQUIREMENTS section below).

6. Disseminate results. All recipients are expected to make oral presentations at professional meetings, write manuscripts, and publish scientific articles describing the results of this research in peer-reviewed scientific journals. The published articles form an important part of the project's permanent contribution to the HIV behavioral intervention research field as a whole, and also to increasing the effectiveness of HIV prevention public health efforts. All publications should be finished in a timely manner shortly after the completion of the research.

As part of their final project reporting requirements, all recipients will prepare a written report summarizing their study and its implications for improving sampling of representative samples, or for improving sexual behavior measurement in future research and in public health programs among populations at risk for HIV infection and transmission (see TECHNICAL REPORTING REQUIREMENTS section below). Finally, CDC may invite some or all recipients to participate in developing one or more joint publication(s) discussing sampling and sexual behavior measurement issues in HIV behavioral intervention research.

B. CDC Activities

1. Host three meetings of the award recipients. The purpose of these meetings is to discuss proposed work and study objectives, refine work plans as needed, review work progress and next steps, and disseminate final results.

2. Collaborate with the award recipient in the direction of activities. These activities include assisting in research design, methods, data analyses, implementation, development of project written documents, and dissemination of findings.

3. Evaluate progress reports. The purpose of this evaluation is to ensure that the objectives are being accomplished, and terms and conditions of the award are being met.

4. Participate in the preparation of results for publication.

5. Conduct site visits. CDC staff may schedule site visits with the recipients to assess project progress and discuss issues or problems, as needed.

Technical Reporting Requirements

An original and two complete copies of the following three written documents are required: (1) the revised (if appropriate) research protocol following the first Atlanta meeting, (2) the mid-term progress report at the time of the second Atlanta meeting, and (3) the final project report after the third Atlanta meeting (see previous RECIPIENT ACTIVITIES section). These should be sent to the Grants Management Branch, Procurement and Grants Office, CDC. Time lines for the reports will be established shortly after award. Financial status and performance reports are required no later than 90 days after the end of the project.

Application Content

Applications must be developed in accordance with application PHS Form 5161–1, (OMB Number 0937–0189), information contained in the program announcement, and the instructions provided below:

Copies for Submission: Applicants are required to submit an original plus two complete copies of the application.

Line Spacing and Page Formats: All pages in the application should be clearly and sequentially numbered. Material in appendices should be one-sided only. The original and each copy of the application must be submitted UNSTAPLED and UNBOUND. All applications should be double spaced, in a 12-point font on 8½″ by 11″ paper, with at least 1″ margins and printed on one side only.

Table of Contents: A table of contents must list all parts of the application and its appendices, along with their corresponding page numbers.

Abstract Section Format: Applicants must provide a one-page, single-spaced abstract. The abstract is not counted in the 25-page limit of the narrative. The application title should be at the top of the first page of the abstract. ''Activity 1'' or ''Activity 2'' must be included in parentheses immediately following the title. The abstract should be placed immediately preceding the main body of the narrative.

Narrative Section Length: The narrative section may not exceed 25 double-spaced pages in length, excluding the abstract and appendices. Applications with narrative sections longer than the permissible length, or applications that fail to comply with other requirements described in this section, will not be reviewed.

Abstract and Narrative Section Content:

1. Title (Activity 1 or Activity 2) and Abstract: The abstract should be a clear 1-page summary of the proposal.

2. Introduction: Include: (1) a description of the applicant's understanding of sampling or sexual behavior measurement methods issues in HIV behavioral intervention research; (2) a brief review of relevant literature; (3) a brief introductory description of the proposed work, addressing how it pertains to either the formative research phase of an on-going behavioral intervention or how it augments the efficacy or effectiveness phases of testing the intervention; and, (4) an assessment of the scientific and public health value of the proposed work.

Provide evidence that: (1) the major intervention-related activities have already been designed and funded, and are being implemented at the time of submission of the proposal; (2) the applicant has access and permission to use data already being collected or that will be collected as part of the intervention (this evidence should be corroborated by a letter(s) of permission to use the data from the current manager of the data set(s) and applicants should include copies of such letters in the proposal's appendices); and, (3) the proposal will not conflict with the on-going activities of the intervention research study.

3. Current Intervention Design and Methods: (1) Applicants should provide a description of the research design and goals that are presently being used in the on-going behavioral intervention study; (2) a description of the target population, including their behavioral risk factors for HIV infection or transmission; (3) a description of the sampling methods that are presently

being used for sampling the intervention study population; and (4) a description of the data collection methods that are presently being used to collect sexual behavior and other key information in the intervention study.

4. Proposed Research Goals and Time Line: (1) Identify the specific sampling or sexual behavior methods research goals and objectives that will be addressed by the proposed research; (2) describe how achievement of these goals and objectives will supplement and strengthen the sampling or sexual behavior methods currently being used in the intervention study; and (3) present a detailed time line for completing the goals and objectives of the proposed project.

5. Proposed Data Set(s): (1) Describe the data set(s) to be generated and used for completing the proposed work, including data collection procedures, the specific variables involved, the quantity and scientific quality of the data, and the nature of the data and, (2) if applicable, describe any relevant previous analyses conducted on the data set(s).

6. Data Collection, Management, Analysis, and Dissemination: (1) Describe the proposed data collection plans in detail; (2) explain what specific variables will be used and which statistical or ethnographic methods will be used in the analysis; (3) describe computer and data management systems, as well as the statistical or ethnographic software packages to be used for the proposed work; (4) describe the plan and capacity for storing the data securely and confidentially; and, (5) describe the plan for disseminating the findings of the research.

7. Research Staffing Plan: (1) Explain the proposed staffing plan for the research, percentage of time each staff member will commit to this project, and division of duties and responsibilities for the project, including brief position descriptions for the proposed personnel; (2) provide evidence that the proposed staff have the capacity and experience to conduct the proposed methods research and analyses; (3) discuss general support activities such as project oversight or data management activities that will contribute to the completion of all analytic activities; and, (4) list the names and roles of staff members who are key to the completion of the project and include their curriculum vitae, highlighting any statistical and methodologic publications.

8. Budget: (1) Provide a detailed, line-item budget for the project (this should include plans for at least three trips to Atlanta to meet with CDC representatives and other researchers) and (2) a budget narrative that justifies each line item.

Evaluation Criteria

Applicants will be reviewed and evaluated individually according to the following criteria:

1. Title, Abstract, and Introduction (12 Points)

Quality and thoroughness of the title and abstract in summarizing the key features of the proposed research activities. Indication of whether the proposal falls under Activity 1 or Activity 2 of this announcement. Strength of the applicant's understanding of the scientific and public health issues related to sampling or sexual behavior measurement methods in HIV behavioral intervention research. Thorough review of relevant scientific literature and previous methods research.

Scientifically appropriate and feasible work description is proposed. The proposed work will significantly supplement and strengthen the sampling or sexual behavior measurement methods being used in the on-going behavioral intervention project. Significance of the proposed study's findings for improving the scientific credibility and public health utility of future HIV behavioral intervention research.

2. Strength of Current Behavioral Intervention Design and Methods (12 Points)

Scientific and public health merit of the on-going HIV behavioral intervention study design. The intervention is based on relevant behavioral science theory. Degree of merit of the research methods currently being used in the HIV behavioral intervention study. The applicant provides a thorough description of the intervention's target population, and provides strong evidence that the target population is at high behavioral risk for HIV infection. Information should also be provided on the extent to which the proposed work addresses the inclusion of women, racial and other ethnic minorities. Current quality of sampling methodology used for selecting the intervention study sample. Current quality of the data collection methods used to collect sexual behavior and other key information in the intervention study.

3. Useful Research Goals(s) and Appropriate Research Time Line (18 Points)

The proposed goals and objectives are practical and are based on previous scientific research. Achievement of the goals and objectives will significantly improve the sampling or sexual behavior measurement components of the intervention study. The applicant provides a clear, detailed, and realistic time line for completing all phases of the proposed project. The time line includes participation in the three Atlanta meetings and submission of required written project documents as described in previous sections of this announcement.

4. Quality and Access to Proposed Data Set(s) (18 Points)

The applicant provides a clear description of the data set(s) to be generated and used for completing the current work, including data collection procedures, the specific variables involved, the quantity and quality of the data, and nature of the data. The proposed data set(s) are not likely to contain major scientific flaws. If applicable, sufficient previous analyses conducted on existing parts of the data set(s). Strength of evidence that the applicant has or will have access to all necessary data set(s) and other information needed to achieve the goals and objectives of the proposal.

5. Quality of Data Collection, Management, Analysis, and Dissemination Plans (20 Points)

Scientific appropriateness and feasibility of the proposed plan to collect the data. Clear explanation of what variables will be used in the analysis. Selection of appropriate statistical or ethnographic methods for analysis of the data. Adequate research facilities, computer and data management systems, software, and statistical packages are available for completing all phases of the proposed work. Strength of plan to store data securely and maintain confidentiality. Explicit and clear plan for disseminating the findings of the research, including submission of articles to peer reviewed scientific journals and other dissemination activities as described in previous sections of this announcement.

6. Capability of Staff to Carry out Proposed Work (20 Points)

Clear explanation of the proposed staffing plan. Proposed staff will be available for sufficient amounts of time to carry out essential work. A reasonable division of duties and responsibilities for the project is provided, including brief position descriptions for the proposed personnel. Strength of evidence that the proposed staff have the necessary training, capacity and experience to conduct the proposed research. Appropriate project oversight, data management, and analysis plan will contribute to the timely completion of all project activities. Curriculum vitae for key staff members are included, and demonstrate that the staff have strong credentials in terms of relevant experience, training, and capability. Key staff members have demonstrated a history of completing and publishing findings from similar or related methods studies.

7. Budget (not scored)

Extent to which the budget is reasonable, itemized, clearly justified, and consistent with the intended use of the funds.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any applications submitted to CDC, they should send them to Van Malone, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Rd., NE., Rm 300, Mailstop E15, Atlanta, GA 30305, no later than 30 days after the application deadline. The granting agency does not guarantee to ''accommodate or explain'' for State process recommendations it receives after that date.

Indian tribes are strongly urged to request tribal government review of the proposed application. If tribal governments have any tribal process recommendations on applications submitted to the CDC, they should forward them to Van Malone, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Rd., NE., Rm 300, Mailstop E15, Atlanta, GA 30305. This should be done no later than 30 days after the application deadline. The granting agency does not guarantee to ''accommodate or explain'' for tribal process recommendations it receives after that deadline.

Public Health System Reporting Requirements

This program is subject to the Public Health System Reporting Requirements. Under these requirements, all community-based nongovernmental applicants must prepare and submit the items identified below to the head of the appropriate State or local health agency(s) in the program area(s) that may be impacted by the proposed project no later than the receipt date of the Federal application. The appropriate State or local health agency is determined by the applicant. The following information must be provided:

A. A copy of the face page of the application (SF 424).

B. A summary of the project that should be titled ''Public Health System Impact Statement'' (PHSIS), not to exceed one page, and include the following:

1. A description of the population to be served.

2. A summary of the services to be provided; and

3. A description of the coordination plans with the appropriate State or local health agencies.

If the State or local health official should desire a copy of the entire application, it may be obtained from the Single Point of Contact (SPOC) or directly from the applicant.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.941, HIV Demonstration, Research, Public and Professional Education.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committees. In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If any American Indian community is involved, its tribal government must also approve that portion of the project applicable to it. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Women, Racial and Ethnic Minorities

It is the policy of the Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) to ensure that individuals of both sexes and the various racial and ethnic groups will be included in CDC/ATSDR-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian, Alaskan Native, Asian, Pacific Islander, Black and Hispanic. Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. This policy does not apply to research studies when the investigator cannot control the race, ethnicity or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, pages 47947–47951, and dated Friday, September 15, 1995.

HIV/AIDS Requirements

Recipients must comply with the document entitled Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions (June 1992) (a copy is in the application kit). To meet the requirements for a program review panel, recipients are encouraged to use an existing program review panel, such as the one created by the State health department's HIV/AIDS prevention program. If the recipient forms its own program review panel, at least one member must be an employee (or designated representative) of a State or local health department. The names of the review panel members must be listed on the Assurance of Compliance for CDC 0.1113, which is also included in the application kit. The recipient must submit the program review panel's report that indicates all materials have been reviewed and approved.

Application Submission and Deadlines

1. Preapplication Letter of Intent

A non-binding letter of intent-to-apply is required from potential applicants. An original and two copies of the letter should be submitted to the Grants Management Branch, Procurement and Grants Office, CDC (see ''Applications'' for the address). It should be postmarked no later than July 14, 1997. The letter should identify announcement number 751, name of principal investigator, and specify the activity to be addressed by the proposed project. The letter of intent does not influence review of funding decisions, but it will enable CDC to plan the review more efficiently, and will ensure that each applicant receives timely and relevant information prior to application submission.

2. Applications

An original and two complete copies of the application, including PHS Form 5161–1 (OMB Number 0937–0189), must be submitted to Van Malone, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Rd., NE., Rm 300, Mailstop E–15, Atlanta, GA 30305, or before August 7, 1997.

3. Deadlines

a. Applications shall be considered as meeting the deadline if they are either: (1) Received on or before the deadline date; or (2) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

b. Applicants that do not meet the criteria in 3.a.(1) or 3.a.(2) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description, information on application procedures, an application package and business management technical assistance may be obtained from Van Malone, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Rd., NE., Rm 300, Mailstop E–15, Atlanta, GA, telephone (404) 842–6575, Internet E-mail: vxm7@cdc.gov.

Programmatic technical assistance may be obtained from Bob Kohmescher, Deputy Chief, Behavioral Intervention Research Branch, Division of HIV/AIDS Prevention, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Rd., NE., Mailstop E37, Atlanta, GA 30333, telephone (404) 639–8302, Internet E-mail: rnk1@cdc.gov.

Please refer to Announcement 751 when requesting information and submitting an application.

Potential applicants may obtain a copy of ''Healthy People 2000'' (Full Report, Stock No. 017–001–00474–0) or ''Healthy People 2000,'' (Summary Report, Stock No. 017–001–00473–1) referenced in the ''INTRODUCTION,'' through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

The announcement will be available on two Internet sites on the publication date: CDC's home page at http://www.cdc.gov, or at the Government Printing Office home page (including free access to the **Federal Register**) at http://www.access.gpo.gov.

Dated: June 9, 1997.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–15512 Filed 6–12–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0209]

Information for Manufacturers Seeking Marketing Clearance of Diagnostic Ultrasound Systems and Transducers; Draft Guidance; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document entitled, ''Information for Manufacturers Seeking Marketing Clearance of Diagnostic Ultrasound Systems and Transducers.'' This draft guidance is intended to assist the manufacturer in preparing a complete 510(k) premarket notification submission to the Center for Devices and Radiological Health (CDRH) or a third party reviewing organization. The agency is seeking public comment on the draft guidance.

DATES: Written comments on the draft guidance document may be submitted by July 28, 1997.

ADDRESSES: Submit written comments and requests for single copies of the draft guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: Robert A. Phillips, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20852, 301–594–1212.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is making this draft guidance document available in order to assist manufacturers preparing notification submissions for diagnostic ultrasound systems and transducers. In addition to basic information on submitting a 5l0(k) for these devices, the draft guidance contains specific information on device description, predicate device comparison, acoustic output reporting, general clinical safety and effectiveness, and labeling. The draft guidance also contains information on submitting a post-clearance special report called the ''510(k) special report'' providing production acoustic output values and other information.

A guidance document does not bind FDA or the public, and it does not create or confer any rights, privileges, or benefits for or on any person, however, it does represent the agency's current thinking on the subjects discussed therein. The draft guidance document announced in this notice represents the agency's tentative thinking of the subjects discussed therein.

II. Request for Comments

Interested persons may, on or before July 28, 1997, submit to the Dockets Management Branch (address above) written comments on the draft guidance document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

An electronic version of this draft guidance also is available via Internet using the World Wide Web (WWW) (connect to cdrh home page at http://www.fda.gov/cdrh/ode/usgudode.pdf).

Dated: June 4, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–15452 Filed 6–12–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0211]

Guidance for Industry on Nonsterile Semisolid Dosage Forms (SUPAC-SS) for Chemistry, Manufacturing, and Controls; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document entitled ''Guidance for Industry: Nonsterile Semisolid Dosage Forms; Scale-Up and Postapproval Changes: Chemistry, Manufacturing, and Controls; In Vitro Release Testing and In Vivo Bioequivalence Documentation.'' The purpose of this guidance document is to provide insight and recommendations to pharmaceutical sponsors of new drug applications (NDA's), abbreviated new drug applications (ANDA's), and abbreviated antibiotic drug applications (AADA's) who intend to change the components or composition, the manufacturing (process and equipment), the scale-up/scale-down of manufacture, and/or the site of manufacture of a semisolid formulation during the postapproval period. This guidance document addresses nonsterile semisolid preparations (e.g., creams, gels, lotions, and ointments) intended for topical routes of administration. This guidance document represents the agency's current thinking on scale-up and postapproval changes for nonsterile semisolid (SUPAC-SS) dosage forms regulated by the Center for Drug Evaluation and Research (CDER).

DATES: Written comments may be submitted at any time.

ADDRESSES: Submit written requests for single copies of ''Guidance for Industry: Nonsterile Semisolid Dosage Forms; Scale-Up and Postapproval Changes: Chemistry, Manufacturing, and Controls; In Vitro Release Testing and In Vivo Bioequivalence Documentation'' to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vinod P. Shah, Center for Drug Evaluation and Research (HFD–350), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5635.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a guidance document entitled ''Guidance for Industry: Nonsterile Semisolid Dosage Forms; Scale-Up and Postapproval Changes: Chemistry, Manufacturing, and Controls; In Vitro Release Testing and In Vivo Bioequivalence Documentation.'' The purpose of this guidance document is to provide insight and recommendations to pharmaceutical sponsors of NDA's, ANDA's, and AADA's who intend to change: (1) The components or composition; (2) the manufacturing (process and equipment); (3) the scale-up/scale-down of manufacture; and/or (4) the site of manufacture of a semisolid formulation during the postapproval period. This guidance document addresses nonsterile semisolid preparations (e.g., creams, gels, lotions, and ointments) intended for topical routes of administration. The guidance document defines the following: (1) Levels of change; (2) recommended chemistry, manufacturing, and controls (CMC) tests to support each level of change; (3) recommended in vitro release tests and/or in vivo bioequivalence tests to support each level of change; and (4) documentation to support the change.

This guidance document represents the agency's current thinking on scale-up and postapproval changes for nonsterile semisolid dosage forms regulated by CDER. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both.

Interested persons may, at any time, submit written comments on the guidance document to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

An electronic version of this guidance document is also available on the Internet using the World Wide Web (http://www.fda.gov/cder/guidance.htm).

Dated: June 5, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–15451 Filed 6–12–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94N–0418]

Order for Certain Class III Devices; Submission of Safety and Effectiveness Information; Group 3

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is revising the schedule for submission of summaries and citations for 4 devices included in the order requiring manufacturers of 27 class III devices (Group 3) to submit to FDA a summary of, and a citation to, all information known or otherwise available to them respecting such devices, including adverse safety or effectiveness information concerning the devices which has not been submitted under the Federal Food, Drug, and Cosmetic Act (the act). In response to comments received on the August 14, 1995, order and in order to facilitate the review process, FDA is grouping four cardiovascular devices with related uses together and is changing the date by which summaries and citations are to be submitted to February 14, 1998. The agency is deferring the due date for one gastroenterology-urological device also until February 14, 1998. As a reminder to device manufacturers, FDA is also

reprinting the due dates for all other devices listed in the August 14, 1995, order.

DATES: Summaries and citations must be submitted by the dates listed below.

ADDRESSES: Submit summaries and citations to the Documents Mail Center (HFZ–401), Food and Drug Administration, Center for Devices and Radiological Health, 9200 Corporate Blvd., Rockville, MD 20850.

FOR FURTHER INFORMATION CONTACT: Doreen M. Melling, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186.

SUPPLEMENTARY INFORMATION:

I. Background

Section 513 of the act (21 U.S.C. 360c) requires the classification of medical devices into one of three classes: Class I (general controls), class II (special controls), and class III (premarket approval). Generally, devices that were on the market before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94–295), and devices marketed on or after that date that are substantially equivalent to such devices, have been classified by FDA. This notice refers to both the class III devices that were on the market before May 28, 1976, and the substantially equivalent devices that were marketed on or after that date, as ''preamendment devices''.

Section 515(b) of the act (21 U.S.C. 360e(b)) establishes the requirement that a preamendments device that FDA has classified into class III is subject to premarket approval. However, the submission of a premarket approval application (PMA), or a notice of completion of a product development protocol (PDP), is not required until 90 days after FDA issues a final rule requiring premarket approval for the device, or 30 months after final classification of the device, whichever is later. Also such a device is exempt from the investigational device exemption (IDE) regulations (21 CFR part 812) until the date stipulated by FDA in the final rule requiring the submission of a PMA for that device. If a PMA or a notice of completion of a PDP is not filed by the later of the two dates, commercial distribution of the device is required to cease. The device may, however, be distributed for investigational use if the manufacturer, importer, or other sponsor of the device complies with the IDE regulations.

To date, FDA has issued final rules requiring the submission of PMA's for 52 preamendment class III devices. Additionally, FDA has issued proposed rules for 12 other devices. There are 68 remaining preamendment class III devices for which FDA has not yet initiated any action requiring the submission of PMA's. The original number of approximately 140 preamendment class III devices can be accounted for by past reclassification actions.

The Safe Medical Devices Act of 1990 (the SMDA) (Pub. L. 101–629) changed the definition of class II devices from those for which a performance standard is necessary to provide reasonable assurance of safety and effectiveness to those for which there is sufficient information to establish special controls to provide such assurance. Special controls include performance standards, postmarket surveillance, patient registries, guidelines (including guidelines for the submission of clinical data in premarket notification submissions in accordance with section 510(k) of the act (21 U.S.C. 360(k)), recommendations, and other appropriate actions the agency deems necessary to provide such assurance. Thus, the SMDA modified the definition of class II devices to permit reliance on special controls, rather than performance standards alone, to provide reasonable assurance of safety and effectiveness.

The SMDA also added new section 515(i) to the act. This section requires FDA to order manufacturers of preamendment class III devices for which no final regulation requiring the submission of a PMA has been issued to submit to the agency a summary of, and a citation to, any information known or otherwise available to them respecting such devices, including adverse safety and effectiveness information which has not been submitted under section 519 of the act (21 U.S.C. 360i). Section 519 of the act requires manufacturers, importers, or distributors to maintain records and to report information that reasonably suggests that one of its marketed devices may have caused or contributed to a death or serious injury, or that a malfunction of the device is likely to cause death or serious injury on recurrence. Section 515(i) of the act also directs FDA to publish a regulation before December 1, 1995, for each device subject to section 515(i) of the act, either revising the classification of the device into class I or class II or requiring the device to remain in class III. Finally, section 515(i) of the act requires that, within 12 months after publication of a regulation retaining a device in class III, FDA is to establish a schedule for the issuance of a rule requiring the submission of PMA's for the device.

In the **Federal Register** of May 6, 1994 (59 FR 23731), FDA announced its strategy for addressing the 116 remaining preamendment class III devices. In this notice, FDA made available a document setting forth its strategy for implementing the provisions of the SMDA that require FDA to review the classification of certain class III devices, and either reclassify the devices into class I or class II or retain them in class III. Under this plan, the agency divided the universe of preamendment class III devices into 3 groups. Group 1 devices are devices that FDA believes raise significant questions of safety and/or effectiveness, but are no longer used or are very limited in use. Group 2 devices are devices that FDA believes have a high potential for being reclassified into class II. Group 3 devices are devices that FDA believes are currently in commercial distribution and are not likely candidates for reclassification. There are a total of 43, 31, and 42 (15 high priority) devices in Groups 1, 2, and 3, respectively.

In the May 6, 1994, notice, FDA announced its intention to call for the submission of PMA's for the 15 highest priority devices in Group 3, and for all Group 1 devices. The final rule requiring the filing of a PMA or a notice of completion of a PDP for 41 class III devices (Group 1 devices) was published in the **Federal Register** on September 27, 1996 (61 FR 50704). In the May 6, 1994, notice, the agency also announced its intention to issue an order under section 515(i) of the act for the remaining Group 3 devices and all of the Group 2 devices.

In the **Federal Register** of August 14, 1995 (60 FR 41984), FDA issued an order requiring manufacturers of the 27 devices in Group 3 to submit a summary of, and citation to, all safety and effectiveness information known or otherwise available to them respecting such devices, including adverse safety and effectiveness information concerning the devices which had not been submitted under section 519 of the act. In this notice, FDA is grouping devices with related uses together and is revising the date by which summaries and citations are to be submitted. Thus, the summaries for the membrane lung for long term pulmonary support (originally due by August 14, 1996), the arterial embolization device (originally due by August 14, 1996), the cardiopulmonary bypass defoamer (originally due by February 14, 1997), the sorbent hemoperfusion system (originally due by August 14, 1997), and the artificial embolization device (originally due by August 14, 1997), are now due by February 14, 1998. Based upon the information submitted in response to this order, FDA will issue a proposed regulation for each device either proposing its reclassification into class I or class II or retaining the device in class III. The due dates for summaries and citations for the other group 3 devices remain the same and are listed below.

II. Statutory Authority and Enforcement

In addition to the provisions of section 515(i) of the SMDA described in section I of this document, this order is issued under section 519 of the act, as implemented by § 860.7(g)(2) (21 CFR 860.7(g)(2)). This regulation authorizes FDA to require reports or other information bearing on the classification of a device. Section 519 of the act also requires the reporting of any death or serious injury caused by a device or by its malfunction.

Failure to comply with this order is a prohibited act under section 301(q) of the act (21 U.S.C. 331(q)), and the agency will use its enforcement powers to deter noncompliance. Violations under section 301 of the act may be subject to seizure or injunction under sections 302(a) and 304(a) of the act (21 U.S.C. 332(a) and 334(a)). In addition, violations under section 301 of the act may be subject to civil penalties under section 303(f) of the act (21 U.S.C. 333(f)) and criminal prosecution under section 303(a) of the act.

III. Order

The agency is hereby issuing this revised order under sections 515(i) and 519 of the act and § 860.7(g)(1) of the regulations. Under the order, the required information shall be submitted by the dates listed below so that FDA may begin promptly the process established by section 515(i) of the act to either revise or sustain the current classification of these devices. The five devices listed with a February 14, 1998, deadline are the devices whose due date is being revised. The remaining due dates are reprinted here from the August 14, 1995, order as a reminder to device manufacturers.

A. Deadlines for Submissions of Information

For the following seven devices, the required information was to be submitted by August 14, 1996:

1. § 868.2450 *Lung water monitor.*
2. § 868.2500 *Cutaneous oxygen monitor.*
3. § 870.1025 *Arrhythmia detector and alarm.*
4. § 870.3375 *Cardiovascular intravascular filter.*
5. § 874.3400 *Tinnitus masker.*
6. § 884.5940 *Powered vaginal muscle stimulator for therapeutic use.*
7. § 890.3890 *Stair-climbing wheelchair.*

For the following eight devices, the required information was to be submitted by February 14, 1997:

8. § 870.3610 *Implantable pacemaker pulse generator.*
9. § 870.3700 *Pacemaker programmers.*
10. § 870.3800 *Annuloplasty ring.*
11. § 870.5225 *External counter-pulsating device.*
12. § 870.5550 *External transcutaneous cardiac pacemaker (noninvasive).*
13. § 886.3400 *Keratoprosthesis.*
14. § 874.3930 *Tympanostomy tube with semipermeable membrane.*
15. § 874.5350 *Suction antichoke device.*

For the following seven devices, the required information shall be submitted by August 14, 1997:

16. § 870.3450 *Vascular graft prosthesis of less than 6 millimeters diameter.*
17. § 870.3535 *Intra-aortic balloon and control system.*
18. § 870.3600 *External pacemaker pulse generator.*
19. § 874.5370 *Tongs antichoke device.*
20. § 876.5955 *Peritoneo-venous shunt.*
21. § 882.1790 *Ocular plethysmograph.*
22. § 882.5860 *Implanted neuromuscular stimulator.*

For the following five devices, the required information shall be submitted by February 14, 1998:

23. § 868.5610 *Membrane lung for long-term pulmonary support.* (Originally due by August 14, 1996.)[1]
24. § 870.3300 *Arterial embolization device.* (Originally due by August 14, 1996.)[1]
25. § 870.4230 *Cardiopulmonary bypass defoamer.* (Originally due by February 14, 1997.)[1]
26. § 876.5870 *Sorbent hemoperfusion system.* (Originally due by August 14, 1997.)[1]
27. § 882.5950 *Artificial embolization device.* (Originally due by August 14, 1997.)[1]

[1] Revised due date

B. Required Contents of Submissions

By the dates listed above, all manufacturers currently marketing preamendments class III devices subject to this order shall provide a summary or, and citation to, any information known or otherwise available to them respecting the devices, including adverse safety and effectiveness data that has not been submitted under section 519 of the act. FDA suggests that it may be in the best interest of submitters to summarize the information submitted under section 519 of the act to facilitate FDA's decisionmaking, even though such information is not required.

The information should be submitted in one of the two following formats depending on whether the applicant is aware of any information which would support the reclassification of the device into class I (general controls) or class II (special controls). Information that would support the reclassification of the device must consist of adequate, valid scientific evidence showing that general controls alone (class I), or general controls and special controls (class II) will provide a reasonable assurance of the safety and effectiveness of the device.

For manufacturers who are not aware of any information that would support the reclassification of their device into class I or class II, the information provided should be submitted in the following format:

1. *Indications for Use.* A general description of the disease or condition to be diagnosed, treated, cured, mitigated, or prevented, including a description of the patient population for which the device is intended.
2. *Device Description.* An explanation of how the device functions, significant physical and performance characteristics of the device, and basic scientific concepts that form the basis for the device.
3. *Other Device Labeling.* Other device labeling that includes contraindications, warnings and precautions and/or promotional materials.
4. *Risks.* A summary of all adverse safety and effectiveness information and identification of the risks presented by the device as well as any mechanisms or procedures that will control the risk.
5. *Alternative Practices and Procedures.* A description of alternative practices or procedures for diagnosing, treating, preventing, curing, or mitigating the disease or condition for which the device is intended.
6. *Summary of Preclinical and Clinical Data.* The summary of preclinical and clinical data should include the conclusions drawn from the studies which support the safety and effectiveness of the device as well as special controls, if any, that address the adverse effects of the device on health. The summary should include a brief description of the objective of the

studies, the experimental design, how the data were collected and analyzed, and a brief description of the results of the studies, whether positive, negative, or inconclusive. The summary of the clinical study(ies) should also include a discussion of the subject inclusion and exclusion criteria, the study population, reasons for patient discontinuations, and results of statistical analyses.

7. *Bibliography*. A copy of the key references, a brief summary of the salient features of each key reference, and a brief discussion of why the reference is relevant to an evaluation of the safety and effectiveness evaluation of the device.

Manufacturers who are aware of information that would support the reclassification of their device into class I or class II may either submit information using the format described below or may submit a formal reclassification petition, which should include the information described below in addition to the information required under 21 CFR 860.123.

1. *Identification*. A brief narrative identification of the device. This identification should be specific enough to distinguish a particular device from a generic type of device. Where appropriate, this identification should include a listing of the materials, and the component parts, and a description of the intended use of the device.

2. *Risks to Health*. An identification of the risks to health should be provided. This section should summarize all adverse safety and effectiveness information, which have not been submitted under section 519 of the act, particularly the most significant. The mechanisms or procedures which will control the risk should be described. A list of the general hazards associated with the device and a bibliography with copies of the referenced material should be provided.

3. *Recommendation*. A statement whether the manufacturer believes the device should be reclassified into class I or class II.

4. *Summary of Reasons for Recommendation*. Each manufacturer should include a summary of the reasons for requesting reclassification of its device and an explanation of why it believes the device meets the statutory criteria for reclassification into class I or class II. Each manufacturer should also identify the special controls that it believes would be sufficient to provide reasonable assurance of the safety and effectiveness of its device if it believes the device should be reclassified into class II.

5. *Summary of Valid Scientific Evidence on Which the Recommendation Is Based*. Manufacturers are advised that, when considering a formal reclassification petition, FDA will rely only upon valid scientific evidence to determine that there is a reasonable assurance of the safety and effectiveness of the device, if regulated by general controls alone (class I) or by general controls and special controls (class II). Valid scientific evidence consists of evidence from well-controlled investigations, partially controlled studies, studies and objective trials without matched controls, well-documented case histories conducted by qualified experts, and reports of significant human experience with a marketed device, from which it can fairly and responsibly be concluded by qualified experts that there is reasonable assurance of the safety and effectiveness of a device under its conditions of use. The evidence required may vary according to the characteristics of the device, its conditions of use, the existence and adequacy of warnings and other restrictions, and the extent of experience with its use. Isolated case reports, random experience, reports lacking sufficient details to permit scientific evaluation, and unsubstantiated opinions are not regarded as valid scientific evidence to show safety or effectiveness (see § 860.7(c)(2)).

According to § 860.7(d)(1), there is reasonable assurance that a device is safe when it can be determined, based upon valid scientific evidence, that the probable benefits to health from use of the device for its intended uses and conditions of use, when accompanied by adequate directions and warnings against unsafe use, outweigh any probable risks. The valid scientific evidence used to determine the safety of a device shall adequately demonstrate the absence of unreasonable risk of illness or injury associated with the use of the device for its intended uses and conditions for use. Moreover, under § 860.7(e)(1), there is reasonable assurance that a device is effective when it can be determined, based upon valid scientific evidence, that in a significant portion of the target population, the use of the device for its intended uses and conditions of use, when accompanied by adequate directions for use and warnings against unsafe use, will provide clinically significant results.

Manufacturers submitting a formal reclassification petition may wish to request two petitions as examples of successful reclassification petitions. Magnetic Resonance Imaging devices, docket Nos. 87P–0214/CP–1 through CP–13, and Nd:YAG Laser for posterior capsulotomy devices, docket no. 86P–0083, were both reclassified from class III to class II subsequent to the submission of reclassification petitions. Both petitions are available upon submission of a Freedom of Information request to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20850.

IV. Submission of Required Information

The summary of, and citation to, any information required by the act must be submitted by the dates listed above to the Document Mail Center (address above).

Dated: May 30, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–15449 Filed 6–12–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94N–0417]

Order for Certain Class III Devices; Submission of Safety and Effectiveness Information; Group 2

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is revising the schedule for submission of summaries and citations for 3 devices included in the order requiring manufacturers of 31 class III devices (Group 2) to submit to FDA a summary of, and a citation to, all information known or otherwise available to them respecting such devices, including adverse safety or effectiveness information concerning the devices that have not been submitted under the Federal Food, Drug, and Cosmetic Act (the act). In response to comments received on the August 14, 1995, order and in order to facilitate the review process, FDA is grouping three cardiovascular devices with related uses together and is changing the date by which summaries and citations are to be submitted for them to February 14, 1998. As a reminder to device manufacturers, FDA is also reprinting the due dates for all other devices listed in the August 14, 1995, order.

DATES: Summaries and citations must be submitted by the dates listed below.

ADDRESSES: Submit summaries and citations to the Document Mail Center (HFZ–401), Food and Drug Administration, Center for Devices and Radiological Health, 9200 Corporate Blvd., Rockville, MD 20850.

FOR FURTHER INFORMATION CONTACT: Doreen M. Melling, Center for Devices and Radiological Health (HFZ–404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186.

SUPPLEMENTARY INFORMATION:

I. Background

Section 513 of the act (21 U.S.C. 360c) requires the classification of medical devices into one of three classes: Class I (general controls), class II (special controls), and class III (premarket approval). Generally, devices that were on the market before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94–295), and devices marketed on or after that date that are substantially equivalent to such devices, have been classified by FDA. This notice refers to both the class III devices that were on the market before May 28, 1976, and the substantially equivalent devices that were marketed on or after that date, as ''preamendment devices''.

Section 515(b) of the act (21 U.S.C. 360e(b)) establishes the requirement that a preamendments device that FDA has classified into class III is subject to premarket approval. However the submission of a premarket approval application (PMA), or a notice of completion of a product development protocol (PDP), is not required until 90 days after FDA issues a final rule requiring premarket approval for the device, or 30 months after final classification of the device, whichever is later. Also, such a device is exempt from the investigational device exemption (IDE) regulations (21 CFR part 812) until the date stipulated by FDA in the final rule requiring premarket approval for that device. If a PMA or a notice of completion of a PDP is not filed by the later of the two dates, commercial distribution of the device is required to cease. The device may, however, be distributed only for investigational use if the manufacturer, importer, or other sponsor of the device complies with the IDE regulations.

To date, FDA has issued final rules requiring the submission of PMA's for 52 preamendment class III devices. Additionally, FDA has issued proposed rules for 12 other devices. There are 68 remaining preamendment class III devices for which FDA has not yet initiated any action requiring the submission of PMA's. The original number of approximately 140 preamendments class III devices can be accounted for by past reclassification actions.

The Safe Medical Devices Act of 1990 (the SMDA) (Pub. L. 101–629) changed the definition of class II devices from those for which a performance standard is necessary to provide reasonable assurance of safety and effectiveness to those for which there is sufficient information to establish special controls to provide such assurance. Special controls include performance standards, postmarket surveillance, patient registries, guidelines (including guidelines for the submission of clinical data in premarket notification submissions in accordance with section 510(k) of the act (21 U.S.C. 360(k)), recommendations, and other appropriate actions the agency deems necessary to provide such assurance. Thus, the SMDA modified the definition of class II devices to permit reliance on special controls, rather than performance standards alone, to provide reasonable assurance of safety and effectiveness.

The SMDA also added new section 515(i) to the act. This section requires FDA to order manufacturers of preamendment class III devices for which no final regulation requiring the submission of PMA's has been issued to submit to the agency a summary of, and a citation to, any information known or otherwise available to them respecting such devices, including adverse safety and effectiveness information which has not been submitted under section 519 of the act (21 U.S.C. 360i). Section 519 of the act requires manufacturers, importers, or distributors to maintain records and to report information that reasonably suggests that one of its marketed devices may have caused or contributed to a death or serious injury or that a malfunction of the device is likely to cause death or serious injury on recurrence. Section 515(i) of the act also directs FDA to publish a regulation before December 1, 1995, for each device subject to section 515(i), either revising the classification of the device into class I or class II or requiring the device to remain in class III. Finally, section 515(i) of the act requires that, within 12 months after publication of a regulation retaining a device in class III, FDA is to establish a schedule for the promulgation of a rule requiring the submission of PMA's for the device.

In the **Federal Register** of May 6, 1994 (59 FR 23731), FDA announced its strategy for addressing the 116 remaining preamendment class III devices. In this notice, FDA made available a document setting forth its strategy for implementing the provisions of the SMDA that require FDA to review the classification of certain class III devices, and either reclassify the devices into class I or class II or retain them in class III. Under this plan, the agency divided the universe of preamendment class III devices into three groups: Group 1 devices are devices that FDA believes raise significant questions of safety and/or effectiveness, but are no longer used or are very limited in use; Group 2 devices are devices that FDA believes have a high potential for being reclassified into class II; and Group 3 devices are devices that FDA believes are currently in commercial distribution and are not likely candidates for reclassification. There are a total of 43, 31, and 42 (15 high priority) devices in Groups 1, 2, and 3, respectively.

In the May 6, 1994, notice, FDA announced its intention to call for the submission of PMA's for the 15 highest priority devices in Group 3, and for all Group 1 devices. In the **Federal Register** of September 27, 1996 (61 FR 50704), was published a final rule requiring the filing of a PMA or a notice of completion of a PDP for 41 class III devices (Group 1 device). In the **Federal Register** of May 6, 1994, notice, the agency also announced its intention to issue an order under section 515(i) of the act for the remaining Group 3 devices and all of the Group 2 devices.

In the **Federal Register** of August 14, 1995 (60 FR 41986), FDA issued an order requiring manufacturers of the 31 devices in Group 2 to submit a summary of, and citation to, all safety and effectiveness information known or otherwise available to them respecting such devices, including adverse safety and effectiveness information concerning the devices which had not been submitted under section 519 of the act. Under section 515(i) of the act, FDA is authorized to require the submission of the adverse safety and effectiveness information identified in the summary and citation submitted in response to this order, if such information is available. In this notice, FDA is grouping three devices with related uses together and is revising the date by which summaries and citations are to be submitted. The summaries for the cardiopulmonary bypass arterial line blood filter (originally due by August 14, 1997), the cardiopulmonary bypass pulsatile flow generator (originally due by August 14, 1998), and the cardiopulmonary bypass oxygenator (originally due by August 14, 1997) are now due by February 14, 1998. Based upon the information submitted in response to this order, FDA will issue a proposed regulation for each device either proposing its reclassification into class I or class II, or retaining the device in class III. The due dates for summaries and citations for the other Group 2 devices remain the same and are listed below.

II. Statutory Authority and Enforcement

In addition to the provisions of section 515(i) of the SMDA described in section I of this document, this order is issued under section 519 of the act, as implemented by § 860.7(g)(2) (21 CFR 860.7(g)(2)). This regulation authorizes FDA to require reports or other information bearing on the classification of a device. Section 519 of the act also requires the reporting of any death or serious injury caused by a device or by its malfunction.

Failure to comply with this order is a prohibited act under section 301(q) of the act (21 U.S.C. 331(q)), and the agency will use its enforcement powers to deter noncompliance. Violations under section 301 of the act may be subject to seizure or injunction under sections 302(a) and 304(a) of the act (21 U.S.C. 332(a) and 334(a)). In addition, violations under section 301 of the act may be subject to civil penalties under section 303(f) of the act (21 U.S.C. 333(f)) and criminal prosecution under section 303(a) of the act.

III. Order

The agency is hereby issuing this order under sections 515(i) and 519 of the act and § 860.7(g)(1) of the regulations. Under the order, the required information shall be submitted by the dates listed below so that FDA may begin promptly the process established by section 515(i) of the act to either revise or sustain the current classification of these devices. The three devices listed with a February 14, 1998, due date are the devices whose due date is being revised. The remaining due dates are reprinted here from the August 14, 1995, order as a reminder to device manufacturers.

A. Deadlines for Submission of Information

For the following eight devices, the required information was to be submitted by August 14, 1996:

1. § 864.7250 *Erythropoietin assay*.
2. § 864.7300 *Fibrin monomer paracoagulation test*.
3. § 876.3630 *Penile rigidity implant*.
4. § 878.5360 *Tweezer-type epilator*.
5. § 884.1060 *Endometrial aspirator*.
6. § 884.1100 *Endometrial brush*.
7. § 884.1185 *Endometrial washer*.
8. § 886.3920 *Eye valve implants*.

For the following nine devices, the required information was to be submitted by February 14, 1997:

9. § 866.3305 *Herpes simplex virus serological reagents*.
10. § 866.3510 *Rubella virus serological reagents*.
11. § 870.3620 *Pacemaker lead adaptor*.
12. § 872.6080 *Airbrush*.
13. § 876.4480 *Electrohydraulic lithotriptor*.
14. § 878.3610 *Esophageal prosthesis*.
15. § 878.3720 *Tracheal prosthesis*.
16. § 884.4100 *Endoscopic electrocautery and accessories*.
17. § 884.4150 *Bipolar endoscopic coagulator-cutter and accessories*.

For the following eight devices, the required information shall be submitted by August 14, 1997:

18. § 868.1150 *Indwelling blood carbon dioxide partial pressure analyzer*.
19. § 868.1170 *Indwelling blood hydrogen ion concentration*. analyzer.
20. § 868.1200 *Indwelling blood oxygen partial pressure analyzer*.
21. § 870.3680 *Cardiovascular permanent pacemaker electrodes*.
22. § 876.5860 *High permeability hemodialysis system*.
23. § 878.5650 *Topical 02 chamber*.
24. § 882.5940 *Electroconvulsive therapy device*.
25. § 888.3660 *Shoulder semi-constrained*.

For the following three devices, the required information shall be submitted by February 14, 1998:

26. § 870.4260 *Cardiopulmonary bypass arterial line blood filter*. (Originally due August 14, 1997.)[1]
27. § 870.4320 *Cardiopulmonary bypass pulsatile flow generator*. (Originally due on August 14, 1998.)[1]
28. § 870.4350 *Cardiopulmonary bypass oxygenator*. (Originally due on August 14, 1997.)[1]

For the following three devices, the required information shall be submitted by August 14, 1998:

29. § 870.3710 *Pacemaker repair or replacement material*.
30. § 870.5200 *External cardiac compressor*.
31. § 876.5540 *Implanted blood access device*.

B. Required Contents of Submissions

By the dates listed in section III. A of this document, all manufactures currently marketing preamendments class III devices subject to this order shall provide a summary of, and citation to, any information known or otherwise available to them respecting the devices, including adverse safety and effectiveness data which has not been submitted under section 519 of the act. FDA suggests that it may be in the best interest of submitters to summarize the information submitted under section 519 of the act to facilitate FDA's decisionmaking, even though such information is not required.

The information should be submitted in one of the two following formats depending on whether the applicant is aware of any information that would support the reclassification of the device into class I (general controls) or class II (special controls). Information that would support the reclassification of the device must consist of adequate, valid scientific evidence showing that general controls alone (class I), or general controls and special controls (class II) will provide a reasonable assurance of the safety and effectiveness of the device.

For manufacturers who are not aware of any information that would support the reclassification of their device into class I or class II, the information provided should be submitted in the following format:

1. *Indications for use*. A general description of the disease or condition to be diagnosed, treated, cured, mitigated, or prevented, including a description of the patient population for which the device is intended.
2. *Device description*. An explanation of how the device functions, significant physical and performance characteristics of the device, and basic scientific concepts that form the basis for the device.
3. *Other device labeling*. Other device labeling that includes contraindications, warnings and precautions and/or promotional materials.
4. *Risks*. A summary of all adverse safety and effectiveness information and identification of the risks presented by the device as well as any mechanisms or procedures which will control the risk.
5. *Alternative practices and procedures*. A description of alternative practices or procedures for diagnosing, treating, preventing, curing, or mitigating the disease or condition for which the device is intended.
6. *Summary of preclinical and clinical data*. The summary of preclinical and clinical data should include the conclusions drawn from the studies which support the safety and effectiveness of the device as well as special controls, if any, which address the adverse effects of the device on health. The summary should include a

[1] Revised due date.

brief description of the objective of the studies, the experimental design, how the data were collected and analyzed, and a brief description of the results of the studies, whether positive, negative, or inconclusive. The summary of the clinical study(ies) should also include a discussion of the subject inclusion and exclusion criteria, the study population, reasons for patient discontinuations, and results of statistical analyses.

7. *Bibliography*. A copy of the key references, a brief summary of the salient features of each key reference, and a brief discussion of why the reference is relevant to an evaluation of the safety and effectiveness evaluation of the device.

Manufacturers who are aware of information that would support the reclassification of their device into class I or class II may either submit information using the format described below or may submit a formal reclassification petition, which should include the information described below in addition to the information required under 21 CFR 860.123:

1. *Identification*. A brief narrative identification of the device. This identification should be specific enough to distinguish a particular device from a generic type of device. Where appropriate, this identification should include a listing of the materials, and the component parts, and a description of the intended use of the device.

2. *Risks to health*. An identification of the risks to health should be provided. This section should summarize all adverse safety and effectiveness information that has not been submitted under section 519 of the act, particularly the most significant. The mechanisms or procedures which will control the risk should be described. A list of the general hazards associated with the device and a bibliography with copies of the referenced material should be provided.

3. *Recommendation*. A statement whether the manufacturer believes the device should be reclassified into class I or class II.

4. *Summary of reasons for recommendation*. Each manufacturer should include a summary of the reasons for requesting reclassification of its device and an explanation of why it believes the device meets the statutory criteria for reclassification into class I or class II. Each manufacturer should also identify the special controls that it believes would be sufficient to provide reasonable assurance of the safety and effectiveness of its device if it believes the device should be reclassified into class II.

5. *Summary of valid scientific evidence on which the recommendation is based*. Manufacturers are advised that, when considering a formal reclassification petition, FDA will rely only upon valid scientific evidence to determine that there is reasonable assurance of the safety and effectiveness of the device, if regulated by general controls alone (class I) or by general controls and special controls (class II). Valid scientific evidence consists of evidence from well-controlled investigations, partially controlled studies, studies and objective trials without matched controls, well-documented case histories conducted by qualified experts, and reports of significant human experience with a marketed device, from which it can fairly and responsibly be concluded by qualified experts that there is reasonable assurance of the safety and effectiveness of a device under its conditions of use. The evidence required may vary according to the characteristics of the device, its conditions of use, the existence and adequacy of warnings and other restrictions, and the extent of experience with its use. Isolated case reports, random experience, reports lacking sufficient details to permit scientific evaluation, and unsubstantiated opinions are not regarded as valid scientific evidence to show safety or effectiveness (see § 860.7(c)(2)).

According to § 860.7(d)(1), there is reasonable assurance that a device is safe when it can be determined, based upon valid scientific evidence, that the probable benefits to health from use of the device for its intended uses and conditions of use, when accompanied by adequate directions and warnings against unsafe use, outweigh any probable risks. The valid scientific evidence used to determine the safety of a device shall adequately demonstrate the absence of unreasonable risk of illness or injury associated with the use of the device for its intended uses and conditions for use. Moreover, under § 860.7(e)(1), there is reasonable assurance that a device is effective when it can be determined, based upon valid scientific evidence, that in a significant portion of the target population, the use of the device for its intended uses and conditions of use, when accompanied by adequate directions for use and warnings against unsafe use, will provide clinically significant results.

Manufacturers submitting a formal reclassification petition may wish to request two petitions as examples of successful reclassification petitions. Magnetic resonance imaging devices, Docket Nos. 87P–0214/CP–1 through CP–13, and Nd:YAG Laser for posterior capsulotomy devices, Docket No. 86P–0083, were both reclassified from class III to class II subsequent to the submission of reclassification petitions. Both petitions are available upon submission of a Freedom of Information request to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20850.

IV. Submission of Required Information

The summary of, and citation to, any information required by the act must be submitted by the dates listed above to the Document Mail Center (address above).

Dated: June 4, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–15450 Filed 6–12–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–255]

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collection for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Municipal Health Services Cost Report Form, and supporting regulations 42 CFR 405.427; *Form No.:* HCFA–255; *Use:* The Municipal Health Services Program (MHSP) Cost Report (HCFA–255) is used by the participating MHSP clinics to report costs for health care services rendered to Medicare beneficiaries. It is also used to gather data to properly evaluate the MHSP demonstration. This form has been used since 1979. *Frequency:* Annually; *Affected Public:* Not-for-profit institutions, and State, Local or Tribal Government; *Number of Respondents:* 14; *Total Annual Responses:* 14; *Total Annual Hours:* 476.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Analysis and Planning Staff, Attention: John Rudolph, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: June 5, 1997.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources.

[FR Doc. 97–15506 Filed 6–12–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Special Projects of National Significance Program; HIV Service Delivery Models

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of limited competition.

SUMMARY: The Health Resources and Services Administration (HRSA) announces a limited competition to support the completion and dissemination of innovative programs to advance knowledge and skills in the delivery of health and support services. The objectives of the Special Projects of National Significance (SPNS) Program are to: assess the effectiveness of particular models of care; support innovative program design; and to promote replication of effective models. Awards will be made under the program authority of Section 2691 of the Public Health Service Act, as amended by the Ryan White CARE Act Amendments of 1996, Public Law 104–146, dated May 20, 1996.

HRSA is limiting competition among eight (8) currently funded SPNS Program cooperative agreement projects that were initially funded in fiscal year (FY) 1994 for three years, including: The Center for Community Health, Education, and Research, Dorchester, MA; Emory University, Atlanta, GA; the Interamerican College of Physicians and Surgeons, New York, NY; Missouri Department of Health, Jefferson City, MO; University of Colorado Health Science Center, Denver, CO; University of Texas Health Science Center, San Antonio, TX; University of Washington, Seattle, WA; and, the Visiting Nurse Association, Los Angeles, CA.

An additional two-year project period will allow these projects the opportunity to fully and comprehensively evaluate, and disseminate the models of HIV care developed during the initial project.

GRANTS/AMOUNTS: The total amount of funds available in FY 97 is $2,200,000. Up to eight projects will be funded for an additional two-year project period. Funding beyond FY 97 is subject to the appropriation of FY 98 funds for the Ryan White CARE Act and satisfactory progress in meeting the project's objectives.

FOR FURTHER INFORMATION CONTACT: Additional information may be obtained from Ms. Mirtha Beadle, Deputy Director, SPNS Program, Office of Science and Epidemiology, Bureau of Health Resources Development, Health Resources and Services Administration, 5600 Fishers Lane, Room 7A–08, Rockville, MD 20857. The telephone number is (301) 443–6439 and the FAX number is (301) 443–4965.

OTHER GRANT INFORMATION:

Certification Regarding Environmental Tobacco Smoke:

The Public Health Service strongly encourages all grant and contract recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

OMB Catalog of Federal Domestic Assistance:

The number for the Special Projects of National Significance Program is 93.928.

Dated: June 5, 1997.

Claude Earl Fox,

Acting Administrator.

[FR Doc. 97–15448 Filed 6–12–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National institute of Mental Health Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: June 19, 1997.
Time: 11 a.m.
Place: One Washington Circle, One Washington Circle, N.W., Washington, DC 20037.
Contact Person: Maureen L. Eister, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: June 25, 1997.
Time: 6 p.m.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Ave, Chevy Chase, MD 20815.
Contact Person: Michael D. Hirsch, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857 Telephone: 301, 443–3936.

Committee Name: National Institute of Mental Health Special Emphasis panel.
Date: June 27, 1997.
Time: 10 a.m.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Michael D. Hirsch, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857; Telephone: 301, 443–3936.

Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: July 2, 1997.
Time: 3 p.m.
Place: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.
Contact Person: Donna Ricketts, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857; Telephone: 301, 443–3936.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: June 9, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–15546 Filed 6–12–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of General Medical Sciences meeting:

Committee Name: Minority Biomedical Research Support, Review Subcommittee—Panel2.

Date: June 13, 1997.

Time of Meeting: 8:30 a.m.—adjournment.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, N.W., Washington, D.C. 20007.

Contact Person: Arthur L. Zachary, Ph.D. Scientific Review Administrator, NIGMS 45 Center Drive, Room 1AS–13 Bethesda, MD 20892–6200 301–594–2886.

Purpose: To review Institutional research training grant applications.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS])

Dated: June 10, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–15547 Filed 6–12–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Chemistry and Related Sciences.

Date: July 9, 1997.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 5106; Telephone Conference.

Contact Person: Dr. Richard Panniers, Scientific Review Administrator, 6701 Rockledge Drive, Room 5106, Bethesda, Maryland 20892; (301) 435–1166.

Name of SEP: Chemistry and Related Sciences.

Date: July 22, 1997.

Time: 10:00 a.m.

Place: NIH, Rockledge 2, Room 4156; Telephone Conference.

Contact Person: Dr. Ronald Dubois, Scientific Review Administrator, 6701 Rockledge Drive, Room 4156, Bethesda, Maryland 20892; (301) 435–1722.

Name of SEP: Biological and Physiological Sciences.

Date: August 7, 1997.

Time: 1:00 p.m.

Place: Holiday Inn-Georgetown, Washington, DC.

Contact Person: Dr. Krish Krishnan, Scientific Review Administrator, 6701 Rockledge Drive, Room 4122, Bethesda, Maryland 20892; (301) 435–1779.

Purpose/Agenda: To review Small Business Innovation Research.

Name of SEP: Multidisciplinary Sciences.

Date: July 14, 1997.

Time: 8:30 a.m.

Place: Holiday Inn-Georgetown, Washington, DC.

Contact Person: Dr. Lee Rosen, Scientific Review Administrator, 6701 Rockledge Drive, Room 5116, Bethesda, Maryland 20892; (301) 435–1171.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 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: June 9, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–15545 Filed 6–12–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Drug Testing Advisory Board (DTAB) of the Center for Substance Abuse Prevention in August 1997.

The two-day scientific meeting will be to continue discussing alternative specimens and technologies of drug testing (i.e., hair, saliva, sweat, and non-instrument based on-site tests) as they apply to workplace drug testing programs. The entire meeting is open to the public; however, attendance by the public will be limited to space available. Therefore, it would be helpful if those planning to attend would pre-register by following Registration instructions below. There will be a very limited time for public comment during the meeting. Any individual desiring to make a formal comment should notify the contact person listed below before July 25.

The purpose of the meeting is: (1) To review the proposed principles and criteria associated with a forensic workplace drug testing program presented at the April 28–30, 1997, DTAB meeting and determine if those are the appropriate standards that any drug testing program needs to satisfy; (2) to review the information and scientific studies presented or submitted by the representatives of the alternative specimens and technology industries during and/or after the April 28–30 DTAB meeting, to determine their strengths and weaknesses, what criteria they satisfy, and what areas may need improvement; and (3) to make recommendations to assist these alternative specimens and technologies to satisfy the criteria.

An agenda for this meeting and a roster of board members may be obtained from: Ms. Giselle Hersh, Division of Workplace Programs, Room

13A–54, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6014.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Drug Testing Advisory Board.

Meeting Date: August 5–6, 1997.

Place: DoubleTree Hotel, 1750 Rockville Pike, Rockville, Maryland 20852; Phone: (301) 468–1100.

Open: August 5, 1997, 8:30 a.m.–5:00 p.m.; August 6, 1997, 8:30 a.m.–4:00 p.m.

Registration: Pre-register by calling: (301) 443–6014 or by FAX: (301) 443–3031 for individuals planning to attend: full name, organization and telephone number or sign in upon arrival; there is no registration fee.

Contact: Donna M. Bush, Ph.D., Executive Secretary, Telephone: (301) 443–6014 and FAX: (301) 443–3031.

Dated: June 6, 1997.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 97–15395 Filed 6–12–97; 8:45 am]

BILLING CODE 4162–20–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4212–N–04]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* August 12, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Olive Walker, Housing, Department of Housing & Urban Development, 451—7th Street, SW., Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Zera B. Taylor, telephone number (202) 708–0558 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Safe Neighborhood Grants (SNG) FR–4212.

OMB Control Number: 2502–0520.

Description of the need for the information and proposed use:

This information collection is required in connection with HUD's proposed issuance of a Notice of Funding Availability (NOFA) that will announce the availability of $20,000,000 in grant funds authorized under the Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1997 (Public Law No. 104–204, 110 Stat 2874, approved 9/26/96.

Agency forms, if applicable: SF–424, SF–424A, SF–LLL, HUD–50080 and HUD–2880.

Members of affected public: Project Owners in federally-assisted low-income housing projects.

Status of the proposed information collection:

Authority: Section 236 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 6, 1997.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 97–15508 Filed 6–12–97; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4200–N–67]

Notice of Proposed Information Collection for Public Comment

AGENCY: Government National Mortgage Association, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* August 12, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Sonya K. Suarez, Government National Mortgage Association, Office of Policy, Program and Risk Management, Department of Housing & Urban Development, 451—7th Street, SW., Room *6226*, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Sonya K. Suarez, on (202) 708–2772 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Ginnie Mae Issuer Eligibility and Integrity Reforms.

OMB Control Number: 2503–0027.

Description of the need for the information and proposed use: The collection of information enables Ginnie Mae to hold issuers to higher eligibility standards and integrity standards. As guarantor of over $500 billion of outstanding mortgage-backed securities, it is Ginnie Mae's responsibility to have the proper risk management requirements in place to adequately protect the Government's interest. The collection of information will enable Ginnie Mae to better assess the capability of each issuer to fulfill its responsibility as a Ginnie Mae issuer.

Agency form numbers: not applicable.

Members of affected public: Business or other for-profit and the Federal Government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Reporting Burden:

Description	No. of respondents	Hours of response	Total hours	Total annual cost
Cross Default Agreement	10	1	10	$220
Personnel Disclosure	81	1	81	1,782
Classified Balance Sheet	620	8	4,960	109,120
Changes in Issuer Control	31	1	31	682
Changes in Issuer Status	31	1	31	682
Total Hours & Cost			5,113	112,486

* responses per respondent = 1.
* wage rate = $22/hour.

Total Estimated Burden Hours: 5,113.

Status: Reinstatement, with change, of previously approved collection for which approval has expired.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 28, 1997.

George S. Anderson,

Executive Vice President, Government National Mortgage Association.

[FR Doc. 97–15509 Filed 6–12–97; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4235–N–07]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: [Insert date of publication].

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess, and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: June 5, 1997.

Fred Karnas, Jr.,

Acting Deputy Assistant Secretary for Economic Development.

[FR Doc. 97–15222 Filed 6–12–97; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits for Marine Mammals

On March 26, 1997 a notice was published in the **Federal Register**, Vol. 62, No. 58, Page 14438, that an application had been filed with the Fish and Wildlife Service by Donald Horne, Odem, TX, PRT–826750 for a permit to import a sport-hunted polar bear (*Ursus maritimus*) trophy taken from the Southern Beaufort Sea population, Northwest Territories, Canada, for personal use.

Notice is hereby given that on May 21, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On March 26, 1997 a notice was published in the **Federal Register**, Vol. 62, No. 58, Page 14438, that an application had been filed with the Fish and Wildlife Service by David Fox, Stroudsburg, PA, PRT-826736, for a permit to import a sport-hunted polar bear (*Ursus maritimus*) trophy taken from the Viscount Melville population, Northwest Territories, Canada, for personal use.

Notice is hereby given that on May 21, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On March 26, 1997 a notice was published in the **Federal Register**, Vol. 62, No. 58, Page 14438, that an application had been filed with the Fish and Wildlife Service by Robert Van Horn, Glidden, IA, PRT-826745, for a permit to import a sport-hunted polar bear (*Ursus maritimus*) trophy taken from the Northern Beaufort Sea population, Northwest Territories, Canada, for personal use.

Notice is hereby given that on May 21, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On April 9, 1997 a notice was published in the **Federal Register**, Vol. 62, No. 68, Page 17199, that an application had been filed with the Fish and Wildlife Service by Mark Samsill, Fort Worth, TX, PRT-827037, for a permit to import a sport-hunted polar bear (*Ursus maritimus*) trophy taken from the Southern Beaufort Sea population, Northwest Territories, Canada, for personal use.

Notice is hereby given that on May 27, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On April 9, 1997 a notice was published in the **Federal Register**, Vol. 62, No. 68, Page 17199, that an application had been filed with the Fish and Wildlife Service by Bruce Leven, Mercer Island, WA, PRT-826941, for a permit to import a sport-hunted polar bear (*Ursus maritimus*) trophy taken from the Southern Beaufort Sea population, Northwest Territories, Canada, for personal use.

Notice is hereby given that on May 27, 1997, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Dated: June 9, 1997.

Karen Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–15486 Filed 6–12–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for Grover Tree Farm, Curry County, Oregon

AGENCY: Fish and Wildlife Service.

ACTION: Notice of receipt.

SUMMARY: This notice advises the public that Mr. Kendall Grover has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. The application has been assigned permit number PRT–830269. The proposed permit would authorize the incidental take, in the form of disturbance, of the marbled murrelet (murrelet, *Brachyramphus marmoratus*), federally listed as threatened. The permit would be in effect for 5 years.

The Service announces the receipt of Mr. Grover's incidental take permit application and the availability of the proposed Grover Tree Farm Habitat Conservation Plan (Plan), which accompanies the incidental take permit application, for public comment. The Plan fully describes the proposed project and the measures Mr. Grover will undertake to mitigate for project impacts to the murrelet. The Service has determined that Mr. Grover's Plan qualifies as a ''Low Effect'' Plan as defined by the Fish and Wildlife Service's Habitat Conservation Planning Handbook (November 1996). The Service has further determined that approval of the Plan qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of Interior Manual (516 DM2, Appendix 1 and 516 DM 6, Appendix 1). This notice is provided pursuant to section 10(c) of the Endangered Species Act.

Comments are specifically requested on the appropriateness of the No Surprises assurance contained in this application and described in section VI of the Plan. In the event of unforeseen or extraordinary circumstances affecting the murrelet, Mr. Grover will not be required to provide additional mitigation measures. If the Service makes a finding of extraordinary circumstances, which warrants requiring additional mitigation or compensation, the primary responsibility to provide this compensation rests with the Federal government. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

DATES: Written comments on the permit application and Plan should be received on or before July 14, 1997.

ADDRESSES: Comments regarding the permit application or the Plan should be addressed to the Fish and Wildlife Service, Roseburg Fish and Wildlife Office, 2900 NW Stewart Parkway, Roseburg, Oregon 97470. Please refer to permit number PRT–830269 when submitting comments. Individuals wishing copies of the application and Plan for review should immediately contact the above office. Documents also will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. David Peterson, Fish and Wildlife Service, Roseburg Fish and Wildlife Office, telephone (541) 957–3471.

SUPPLEMENTARY INFORMATION: Section 9 of the Endangered Species Act and Federal regulation prohibits the ''taking'' of a species listed as endangered or threatened. However, the Service, under limited circumstances, may issue permits to ''incidentally take'' listed species, which is take that is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened species are promulgated in 50 CFR 17.32; regulations governing permits for endangered species are promulgated in 50 CFR 17.22.

Background

Mr. Kendall Grover proposes to thin an 86-acre tract of his tree farm over a 5-year period. The dominant conifers on this tract are primarily 45 to 50 year-old Douglas-fir (*Pseudotsuga menziesii*), 10–20 inches in diameter with a few larger trees. The purpose of the action is to reduce tree density in those parts of the 86-acre tract where tree density is causing the growth rate of the dominant and co-dominant trees to decline. This thinning would maintain the health and increase the growth rate of the remaining forest stand. The thinning has the potential to affect the murrelet and the northern spotted owl (owl, *Strix occidentalis caurina*). Mr. Grover's tree farm is adjacent to the South Chetco Late Successional Reserve within the Siskiyou National Forest.

Owls and murrelets are not known to nest on Mr. Grover's property, but activities on Mr. Grover's property have the potential to disturb owls and murrelets that nest on the adjacent South Chetco Late Successional Reserve. The proposed timber harvest (thinning) and management plan for Mr. Grover's property described in the Plan has been designed to avoid incidental take of owls and minimize and mitigate the impacts of take, in the form of disturbance, of murrelets.

To mitigate for any disturbance that might occur to murrelets that occupy the adjacent Forest Service lands or might occupy the Plan area, and to avoid the take of any owls, Mr. Grover proposes to implement the following measures. These measures would also protect and improve murrelet habitat characteristics in the Plan area. Harvest (thinning) will occur only between July 15 and October 31 of each year covered under the Grover Tree Farm Plan. Beginning July 15 and through September 15, timber harvest activities would not begin until one hour after sunrise and would stop two hours before sunset. In the event that seasonal fire restrictions with a 1:00 p.m. daily closure are imposed, timber harvest activities may occur from sunrise to 1:00 p.m. Dominate and co-dominate trees will not be harvested except when necessary to reduce stand density where over-crowding clumps may occur. All trees to be cut will be marked by Mr. Wayne Krieger, Forest Manager. Tree spacing will be variable based on the health and vigor of the surrounding tress. It is anticipated that the stand will have a spacing of 17 feet between trees (170 trees per acre) after the thinning.

All existing large woody structures will be preserved and defective portions of logs from harvested trees will be left on the forest floor. Brush and thickets will be preserved as much as possible. Hardwood trees, young seedlings, snags, and cavity sites in conifer trees, will be preserved as much as possible. Existing roads, trails and landings will be utilized where possible. New construction for access and disturbances to ground cover will be minimized. Skid trails will utilize existing openings to the maximum extent practical. Erosion, which is unlikely to occur under dry soil conditions, will be handled by acceptable conservation practices such as reseeding if it becomes a problem. Most large residual trees from previous harvest will be preserved, and all large residual trees with old-growth characteristics will not be harvested.

The Service has determined that the Grover Tree Farm Plan qualifies as a ''Low Effect'' Plan as defined by the Service's Habitat Conservation Planning Handbook. Low Effect Plans are those involving: (1) minor or negligible effects on federally listed and candidate species and their habitats; and (2) minor or negligible effects on other environmental values or resources. The Grover Tree Farm Plan qualifies as a Low Effect Plan for the following reasons:

1. Approval of the Plan will result in minor or negligible effects on the murrelet. The Service does not anticipate significant direct or cumulative effects to the murrelet or owl will result from the proposed thinning.

2. The proposed thinning will not have adverse effects on unique geographic, historic or cultural sites, or involve unique or unknown environmental risks.

3. Approval of the Plan will not result in any cumulative or growth inducing impacts and, therefore, will not result in significant adverse effects on public health or safety.

4. The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

5. Approval of this Plan will not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

The Service has therefore determined that approval of the Grover Tree Farm Plan qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of Interior Manual (516 DM2, Appendix 1 and 516 DM 6, Appendix 1). No further National Environmental Policy Act documentation will therefore be prepared.

This notice is provided pursuant to section 10(c) of the Endangered Species Act. The Service will evaluate the permit application, Plan, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Endangered Species Act. If it is determined that the requirements are met, a permit will be issued for the incidental take of the marbled murrelet. The final permit decision will be made no sooner than 30 days from the date of this notice.

Dated: June 9, 1997.

Thomas J. Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–15514 Filed 6–12–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

[PRT–830412]

Applicant: Carnivore Preservation Trust, Pittsboro, NC.

The applicant requests a permit to import one captive-bred male ocelot (*Leopardus pardalis*) from Tierpark Herbstein, Austria for the purpose of enhancement of the species through captive propagation.

[PRT–830142]

Applicant: Andrew Merriwether, University of Michigan, Ann Arbor, MI.

The applicant requests a permit to import chimpanzee (*Pan troglodytes*)shed hair samples collected in the Kibale National Park, Uganda, for the purpose of scientific research.

[PRT–830530]

Applicant: James McKeown, Jr., Clearwater, FL.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

[PRT–830569]

Applicant: Melissa Etheridge, Colorado State University, Fort Collins, CO.

The applicant requests a permit to import blood samples collected from captive chimpanzees (*Pan troglodytes*) held by the Uganda Wildlife Education Center, Entebbe, Uganda, for the purpose of scientific research.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application(s) for permits to conduct certain activities with marine mammals. The application(s) was/were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

[PRT–801652]

Applicant: Alaskan Science Resource Center, Anchorage, AK.

Type of Permit: Scientific Research.

Name and Number of Animals: Walrus (*Odobenus rosmarus*), 230.

Summary of Activity to be Authorized: The applicant has requested a second amendment to the permit for scientific research of Pacific walrus in Alaska to include use of alternative drugs for anaesthesia of walrus, and the effects of helicopter overflights on walrus behavior. This request follows the first amendment request published April 24, 1997 [62 FR 20019] which is still pending.

Source of Marine Mammals for Research/Public Display: Alaska.

Period of Activity: through 12/31/2000, the expiration date of the current permit.

[PRT–827717]

Applicant: Pfennig Wildlife Museum, Beulah, ND.

Type of Permit: Public Display.

Name and Number of Animals: polar bear (*Ursus maritimus*); 1.

Summary of Activity to be Authorized: the applicant has requested a permit to import a taxidermied and mounted polar bear for the purposes of public display.

Source of Marine Mammals for Research/Public Display: sport-hunted by the Museum director in the Northwest Territories, Canada.

Period of Activity: Up to five years from date of permit issuance, if issued.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of these applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

[PRT–830375]

Applicant: Lee M. Wahlund, Carrington, ND.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

[PRT–830053]

Applicant: David Barkman, Goodrich, MI.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Northern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

[PRT–830055]

Applicant: Charles Antcliff, Fenton, MI.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Northern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

Written data or comments, requests for copies of the complete applications, or requests for a public hearing on any of these applications for marine mammal permits should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 430, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents and other information submitted with all of the applications listed in this notice are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice at the above address.

Dated: June 9, 1997.

Karen Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–15485 Filed 6–12–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–5700–10; Closure Notice No. NV–030–97–003]

Temporary Closure of Public Lands; Washoe County, Nevada

AGENCY: Bureau of Land Management.

SUMMARY: The Carson City District Manager announces the temporary closure of selected public lands under his administration. This action is being taken to provide for public safety during the 1997 Reno National Championship Air Races.

EFFECTIVE DATES: September 8 through September 14, 1997.

FOR FURTHER INFORMATION CONTACT: Daniel L. Jacquet, Acting Assistant District Manager, Division of Nonrenewable Resources, Carson City District Office, 1535 Hot Springs Road, Carson City, Nevada 89706–0638. Telephone (702) 885–6100.

SUPPLEMENTARY INFORMATION: This closure applies to all the public, on foot or in vehicles. The public lands affected by this closure are described as follows:

Mt. Diablo Meridian

T.21 N., R. 19 E.

Sec. 8, N½NE¼, SE¼NE¼ and E½SE¼

Sec. 16, N½ and SW¼

Aggregating approximately 680 acres.

The above restrictions do not apply to emergency or law enforcement personnel or event officials. The authority for this closure is 43 CFR 8364.1. Persons who violate this closure order are subject to arrest and, upon conviction, may be fined not more than $1,000 and/or imprisoned for not more than 12 months.

A map of the closed area is posted in the Carson City District Office of the Bureau of Land Management.

Dated: June 3, 1997.

Daniel L. Jacquet,

Acting Assistant District Manager, Division of Nonrenewable Resources.

[FR Doc. 97–15505 Filed 6–12–97; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–040–4333–02]

Call for Gila Box Advisory Committee Nominations

AGENCY: Safford Field Office, Bureau of Land Management, Interior.

ACTION: Call for Nominations for Gila Box Riparian National Conservation Area Advisory Committee.

SUMMARY: The purpose of this notice is to solicit public nominations to fill five positions on the Gila Box Riparian National Conservation Area Advisory Committee, pursuant to Title 2, Section 201, of the Arizona Desert Wilderness Act of 1990.

BACKGROUND: The purpose of the seven-member Advisory Committee is to provide informed advice to the Safford Field Manager on management of public lands in the Gila Box Riparian National Conservation Area in southeastern Arizona. Members are currently assisting BLM specialists with the preparation of the Final Gila Box Interdisciplinary Activity Plan. The Advisory Committee will meet approximately two times during FY 97 to assist with plan preparation. Members serve without salary, but are reimbursed for travel and per diem expenses at current rates for government employees.

To ensure membership of the Advisory Committee is balanced in terms of categories of interest represented and functions performed, nominees must be qualified to provide advice in specific areas related to the primary purposes for which the Gila Box Riparian National Conservation Area was created. These categories of expertise include wildlife conservation, riparian ecology, archaeology, hydrology, recreation, environmental education, or other related disciplines.

Three positions on the Committee are representatives for the State of Arizona, Graham County, and Greenlee County. Nominations for these representatives are submitted to the BLM from the Governor of Arizona and the Boards of Supervisors for Graham and Greenlee counties respectively. Those wishing to submit nominations for those three positions should contact the appropriate office to do so.

Nominations for the remaining two positions should be submitted directly to the BLM. Persons wishing to nominate individuals or those wishing to be considered for appointment to serve on the Advisory Committee should provide name, address, profession, biographical data, and category of expertise for each qualified nominee. Persons selected by the Secretary of the Interior to serve on the Committee will serve a three-year term ending on July 31, 2000. Nominations should be submitted to the Safford Field Manager at the address below.

DATES: All nominations should be received by July 20, 1997.

ADDRESSES: For further information contact: Elmer Walls, Gila Box Team Leader, Safford Field Office, 711 14th Ave., Safford, AZ 85546, telephone (520) 428–4040.

Dated: June 3, 1997.

William T. Civish,

Field Manager.

[FR Doc. 97–15491 Filed 6–12–97; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–990–1020–01]

Resource Advisory Council Meeting Location and Time

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM) council meeting of the Upper Snake River Districts Resource Advisory Council will be held as indicated below. The agenda includes the review of public comments of the Healthy Rangeland Standard and Guidelines. All meetings are open to the public. The public may present written comments to the council. Each formal council meeting will have a time allocated for hearing public comments. The public comment period for the council meeting is listed below. Depending on the number of persons wishing to comment, and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need further information about the meetings, or need special assistance such as sign language interpretation or other reasonable accommodations, should contact Debra Kovar at the Shoshone Resource Area Office, P. O. Box 2-B, Shoshone, ID, 83352, (208) 886–7201.

DATE AND TIME: Date is June 23rd, starts at 9:00 a.m. in Federal Building Room B–23, 250 South 4th Ave, Pocatello, Idaho. Public comments from 9:30 a.m.–10:00 a.m. on June 23, 1997.

SUPPLEMENTARY INFORMATION: The purpose of the council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of the public lands.

FOR FURTHER INFORMATION: Contact Debra Kovar, Shoshone Resource Area Office, P. O. Box 2-B, Shoshone, ID 83352, (208) 886–7201.

Dated: June 4, 1997.

Howard Hedrick,

District Manager.

[FR Doc. 97–15495 Filed 6–12–97; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–990–1020–00]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Upper Columbia—Salmon Clearwater District, Idaho.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix, the Bureau of Land Management (BLM) announces the meeting of the Upper Columbia—Salmon Clearwater Districts Resource Advisory Council (RAC) on Friday, June 27, 1997 in Coeur d'Alene, Idaho.

The purpose of the meeting is to discuss the comments received concerning the Idaho Proposed Standards for Rangeland Health and Guidelines for Livestock Grazing Management. The meeting will begin at (9:00 a.m. (PDT) and be held at the Coeur d'Alene Field Office, 1808 N. Third St., Coeur d'Alene, Idaho. The public may address the Council during the public comment period starting at 9:30 a.m.

SUPPLEMENTARY INFORMATION: All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council, or written statements may be submitted for the Council's consideration. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the District Manager.

The Council's responsibilities include providing long-range planning and establishing resource management priorities.

FOR FURTHER INFORMATION CONTACT: Ted Graf (208) 769–5004.

Dated: June 9, 1997.

Fritz U. Rennebaum,

District Manager.

[FR Doc. 97–15513 Filed 6–12–97; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–020–1020–00]

Notice of Meeting

AGENCY: Bureau of Land Management (BLM), Montana, Miles City District, Interior.

ACTION: Notice of meeting.

SUMMARY: The Miles City District Resource Advisory Council will have a meeting Wednesday, July 9, 1997 at 10:00 a.m. in the Alzada Community Hall in Alzada, Montana. The meeting is called primarily to discuss and finalize the proposed off-highway vehicle recommendation, PILT (Payment-in-Lieu-of Taxes), and a briefing on access issues.

The meeting is open to the public and the public comment period is set for 1:00 p.m. The public may make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per person time limit may be established. Summary minutes of the meeting will be available for public inspection and copying during regular business hours. After the public comment period, the council will tour a nearby bentonite reclamation site.

FOR FURTHER INFORMATION CONTACT: Marilyn Krause, Public Affairs Specialist, Miles City District, 111 Garryowen Road, Miles City, Montana 59301, telephone (406) 233–2831.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management. The 15 member Council includes individuals who have expertise, education, training or practical experience in the planning and management of public lands and their resources and who have a knowledge of the geographical jurisdiction of the Council.

Dated: June 5, 1997.

Charles E. Laakso,

Acting District Manager.

[FR Doc. 97–15576 Filed 6–12–97; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(CO–935–1430–01; COC–28635; COC–015744)

Public Land Order No. 7266; Opening of Land Under Section 24 of the Federal Power Act in the Secretarial Order Dated May 13, 1929, Which Established Powersite Classification No. 219, and in the Secretarial Order Dated July 1, 1935, Which Established Power Project No. 400; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order opens, subject to the provisions of Section 24 of the Federal Power Act, 234.47 acres of National Forest System lands withdrawn by Secretarial orders which established Powersite Classification No. 219 and Power Project No. 400. It has been determined that the waterpower potential in this land will not be damaged by disposal subject to Section 24 of the Federal Power Act. This action will allow for consummation of Forest Service land exchanges and retain the waterpower rights to the United States. All of the lands continue to be segregated by other actions. The lands have been and will remain open to mining under the provisions of the Mining Claims Rights Restoration Act of 1955, and to mineral leasing.

EFFECTIVE DATE: July 14, 1997.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, (303) 239–3706.

By virtue of the authority vested in the Secretary of the Interior by the Act of June 10, 1920, Section 24, as amended, 16 U.S.C. 818 (1988), and pursuant to the determination by the Federal Energy Regulatory Commission in DVCO–545 and DVCO–545–001, it is ordered as follows:

1. At 9:00 a.m. on July 14, 1997, the following described National Forest System land withdrawn by the Secretarial Order dated May 13, 1929, which established Powersite Classification No. 219, will be opened to disposal subject to the provisions of Section 24 of the Federal Power Act, and subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law:

New Mexico Principal Meridian

San Juan National Forest

T. 37 N., R. 8 W.,
Sec. 18, lots 10 and 11.

The area described contains 74.47 acres La Plata County.

2. At 9:00 a.m. on July 14, 1997, the following described National Forest System land withdrawn by the Secretarial Order dated July 1, 1935, which established Power Project No. 400, will be opened to disposal by Forest Service land exchange subject to the provisions of section 24 of the Federal Power Act, and subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law:

New Mexico Principal Meridian

San Juan National Forest

T. 38 N., R. 9 W.,
Sec. 12, NE¼NW¼;
Sec. 13, NW¼SE¼;
Sec. 24, E½NW¼.

The areas described aggregate 160 acres of National Forest System lands in La Plata County.

3. The lands described in paragraphs 1 and 2 have been and will remain open to location and entry under the United States mining laws, subject to the provisions of the Act of August 11, 1955, 30 U.S.C. 621 (1988), and to applications and offers under the mineral leasing laws.

Dated: May 28, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–15489 Filed 6–12–97; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–0777–63; GP7–0077; OR–17241]

Public Land Order No. 7265; Partial Revocation of Executive Order Dated June 8, 1866; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive order insofar as it affects 4.50 acres of public land withdrawn for the U.S. Coast Guard's Yaquina Head Light Station. The land is no longer needed for the purpose for which it was withdrawn. The land has been and will remain closed to surface entry, mining, and mineral leasing by an overlapping withdrawal.

EFFECTIVE DATE: June 13, 1997.

FOR FURTHER INFORMATION CONTACT: Betty McCarthy, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–952–6155.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Executive Order dated June 8, 1866, which established Yaquina Head Light Station, is hereby revoked insofar as it affects the following described land:

Willamette Meridian

T. 10 S., R. 11 W.,
Sec. 30, that portion of the unnumbered lot described as Yaquina Head Lighthouse Reservation; Commencing at the southwest corner of Government lot 3 of said sec. 30; Thence north 79°58′18″ west 223.80 ft.; Thence north 35°45′ west 735.90 ft.; Thence north 47°45′ west 440.04 ft. to the point of beginning; Thence south 89°43′56″ east 221.45 ft.; Thence due north 352.50 ft.; Thence north 68° west 97.0 ft.; Thence due north 99.0 ft.; Thence south 62° west 264.0 ft.; Thence due north 66.0 ft.; Thence due west 66.0 ft.; Thence south 32° west 158.40 ft.; Thence south 16°45′ west 171.60 ft.; Thence south 16°45′ east 264.0 ft.; Thence north 27° east 250.80 ft.; Thence south 47°45′ east 150.0 ft. to the point of beginning.

The area described contains approximately 4.50 acres in Lincoln County.

2. The land described in paragraph 1 is included in the Yaquina Head Outstanding Natural Area withdrawal and remains closed to surface entry, mining, and mineral leasing.

Dated: May 28, 1997

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–15493 Filed 6–12–97; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR 53611; OR–080–07–1430–01: G7–0193]

Realty Action; Proposed Direct Sale

May 28, 1997.

The following described public land has been examined and determined to be suitable for transfer out of Federal ownership by direct sale under the authority of Sections 203 and 209 of the Federal Land Policy and Management Act of 1976, as amended (90 Stat. 2750; 43 U.S.C. 1713 and 90 Stat. 2757; 43 U.S.C. 1719), at not less than the appraised fair market value:

Willamette Meridian, Oregon,

T. 2 S., R. 9 W.,
Sec. 7, Unnumbered lot.

The above-described parcel contains 0.19 acre in Tillamook County.

The parcel will not be offered for sale until at least 60 days after publication of this notice in the **Federal Register**. The fair market value of the parcel has not yet been determined. Anyone interested in knowing the values may request this information from the address shown below.

The above-described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above-cited statute, for 270 days or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

The parcel is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal department or agency. No significant resource values will be affected by this transfer. Because of the parcel's relatively small size, its best use is to merge it with the adjoining ownership. The parcel is subject to frequent tidewater overflow and a floodplain restriction on uses is also proposed. The sale is consistent with the Salem District Resource Management Plan and the public interest will be served by offering this parcel for sale.

The parcel is being offered only to Susi K. Trattner (fee owner of Tax Lot 2100, Map 2S 9 6). Use of the direct sale procedures authorized under 43 CFR 2711.3–3, will avoid an inappropriate land ownership pattern.

The terms, conditions, and reservations applicable to the sale are as follows:

1. Susi K. Trattner will be required to submit a deposit of either cash, bank draft, money order, or any combination thereof for not less than the appraised value of the parcel to be sold.

2. The mineral interests being offered for conveyance have no known mineral value. A bid will also constitute an application for conveyance of the mineral estate, in accordance with Section 209 of the Federal Land Policy and Management Act. Susi K. Trattner must include with her bid a nonrefundable $50.00 filing fee for the conveyance of the mineral estate.

3. The conveyance document will be subject to:

a. All valid existing rights and reservations of record.

b. Rights-of-way for ditches or canals will be reserved to the United States under 43 U.S.C. 945.

c. A restrictive covenant running with the land limiting use to farming and ranching purposes.

Detailed information concerning the sale is available for review at the Salem District Office, 1717 Fabry Road SE, Salem, Oregon 97306 or at the Tillamook Resource Area Office, P.O. Box 404 (4610 Third Street), Tillamook, Oregon 97141.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Tillamook Area Manager, Salem District Office, at the above address. Any adverse comments will be reviewed by the Salem District Manager, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Dana R. Shuford,

Tillamook Area Manager.

[FR Doc. 97–15497 Filed 6–12–97; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–050–07–1220–00; 8322]

Arizona: Occupancy and Use, Yuma County, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Restriction for Betty's Kitchen Watchable Wildlife and Interpretive Area to Day-Use Only.

SUMMARY: Notice is hereby given that Betty's Kitchen Watchable Wildlife and Interpretive Area is limited to occupancy and use during daylight hours only.

LOCATION:

Gila and Salt River Meridian, Arizona

T. 7S., R. 22W.,
Sec. 14, SW¼NW¼SE¼, SE¼NE¼SW¼, SW¼NE¼NE¼SW¼, SE¼NW¼,NE¼SW¼.

The area described contains 10 acres, more or less.

SUPPLEMENTARY INFORMATION: Betty's Kitchen Wildlife and Interpretive Area is located in a remote and secluded area. Vandalism to the facilities has been identified as occurring after dark. This restriction to use during daylight hours is necessary in order to provide for the security of the buildings and equipment.

Authority for this action is contained in 43 CFR 8364.1. Violation of this regulation is punishable by a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months. A map of the area is available at the Yuma Field Office, 2555 East Gila Ridge Road, Yuma, Arizona 85365.

EFFECIVE DATE: July 1, 1997.

FOR FURTHER INFORMATION CONTACT: Merv Boyd, Yuma Field Office, 2555 Gila Ridge Road, Yuma, Arizona 85365, (520) 317–3207.

Dated: June 3, 1997.

Gail Acheson,

Field Manager.

[FR Doc. 97–15492 Filed 6–12–97; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Park System Units in the State of Tennessee

AGENCY: National Park Service, Interior.

ACTION: Notice of concurrent jurisdiction.

SUMMARY: Notice is hereby given that the State of Tennessee has conveyed concurrent legislative jurisdiction over the lands and waters within the exterior boundaries of National Park System Units in the State of Tennessee. Additionally, the National Park Service (NPS) is retroceding concurrent jurisdiction to the State of Tennessee over certain NPS lands in the State where the United States currently has exclusive jurisdiction.

EFFECTIVE DATE: Concurrent jurisdiction within NPS units in the State of Tennessee became effective on April 23, 1997.

FOR FURTHER INFORMATION CONTACT: Dennis Burnett, Ranger Activities Division, National Park Service, Washington, D.C. Telephone 202208–4874.

SUPPLEMENTARY INFORMATION: On April 23, 1997, in accordance with section 4–1–106 (1975), Tennessee Code Annotated, the Honorable Don Sundquist, Governor of the State of Tennessee, ceded by agreement to the NPS concurrent legislative jurisdiction over lands and waters administered by the NPS in the State of Tennessee. Acting in accordance with the provisions of 16 U.S.C. 1a–3 and 40 U.S.C. 255, Director of the National Park Service Roger Kennedy signed the agreement on April 8, 1996. In addition, the United States retrocedes to the State of Tennessee concurrent jurisdiction to certain lands currently subject to the exclusive jurisdiction of the United States. The agreement became effective on the date of the last signature, April 23, 1997.

The NPS areas affected by this agreement include:

Andrew Johnson National Historic Site
Big South Fork National River and Recreation Area
Chickamauga-Chattanooga National Military Park
Cumberland Gap National Historical Park
Foothills Parkway (Great Smoky Mountains National Park)
Fort Donelson National Battlefield
Natchez Trace Parkway
Obed Wild and Scenic River
Shiloh National Military Park
Stones River National Battlefield

Dated: June 5, 1997.

Chris Andress,

Chief, Ranger Activities Division, National Park Service.

[FR Doc. 97–15550 Filed 6–12–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Mississippi River Coordinating Commission Meeting

AGENCY: National Park Service.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Mississippi River Coordinating Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

MEETING DATE, TIME, AND ADDRESS: Wednesday, July 23, 1997; 6:30 p.m. to 9:00 p.m.; Council Chambers, South St. Paul City Hall, 125 3rd Avenue North, South St. Paul, Minnesota.

An agenda for the meeting will be available by July 16, 1997. Contact the Superintendent of the Mississippi National River and Recreation Area (MNRRA) at the address listed below. Public statements about matters related to the MNRRA will be accepted at this time.

FOR FURTHER INFORMATION CONTACT: Superintendent JoAnn Kyral, Mississippi National River and Recreation Area, 175 East Fifth Street, Suite 418, St. Paul, Minnesota 55101 (612–290–4160).

SUPPLEMENTARY INFORMATION: The Mississippi River Coordinating Commission was established by Public Law 100–696, dated November 18, 1988.

Dated: June 12, 1997.

William W. Schenk,

Field Director, Midwest Field Area.

[FR Doc. 97–15549 Filed 6–12–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains From Hawaii in the Possession of the Springfield Science Museum, Springfield, MA

Editorial Note: This document was inadvertently omitted from the issue of Wednesday, June 11, 1997.

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains in the possession of the Springfield Science Museum, Springfield, MA.

A detailed assessment of the human remains was made by Springfield Science Museum professional staff in consultation with representatives of Hui Malama I Na Kupuna 'O Hawai'i Nei and the Office of Hawaiian Affairs.

Before 1917 (possibly 1898), human remains representing one individual were donated to the Springfield Science Museum by an unknown person. No known individuals were identified. No associated funerary objects are present.

Morphological evidence indicates this individual is Native Hawaiian based on cranial appearence. This individual was most likely brought back to Springfield, MA, by a whaler or sailor who visited the Hawaiian Islands, then known as the Sandwich Islands. The cranium is labeled ''Sandwich Islands.'' Consultation evidence provided by representatives of Hui Malama I Na Kupuna 'O Hawai'i Nei indicate that shoreline sand dunes, caves, and cliff caves were the locations of exclusively Native Hawaiian burials into the early historic period, and locations easily accessible to whalers and sailors of the period.

Based on the above mentioned information, officials of the Springfield Science Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Lastly, officials of the Springfield Science Museum have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and Hui Malam I Na Kupuna 'O Hawai'i Nei.

This notice has been sent to officials of Hui Malama I Na Kupuna 'O Hawai'i Nei and the Office of Hawaiian Affairs. Representatives of any other Indian tribe or Native Hawaiian organization that believes itself to be culturally affiliated with these human remains should contact John Pretola, Curator of Anthropology, Springfield Science Museum, 236 State Street, Springfield, MA 01103, telephone (413) 263–6875, ext. 320, before July 14, 1997. Repatriation of the human remains to Hui Malama I Na Kupuna 'O Hawai'i Nei may begin after that date if no additional claimants come forward.

Dated: June 2, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–15226 Filed 6–10–97; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a proposed consent decree in *United States* v. *Allied Signal, Inc.,* Civil Action No. TH 97 154 CTF, was lodged on May 28, 1997, with the United States District Court for the Southern District of Indiana. The United States filed this action pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. §§ 9606 and 9607, to secure the performance of a remedial action and to recover past and future response costs incurred at or in connection with the Prestolite Battery Site in Vincennes, Indiana. The Consent Decree requires defendant Allied Signal to perform the remedial action for the site selected by the United States Environmental Protection Agency in a December, 1994 Record of Decision; to reimburse the United States $950,000 for response costs incurred between March 31, 1993, and January 31, 1996; and to reimburse the United States for all future response costs incurred in connection with the Prestolite Site. The remedial action selected by EPA provides for natural attenuation of the contaminants in groundwater beneath the site, institutional controls to prevent access to the contamination, and short and long-term monitoring of the contamination.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Allied Signal, Inc.*, DOJ Ref. #90–11–3–539B.

The proposed consent decree may be examined at the office of the United States Attorney, Southern District of Indiana, United States Courthouse, 5th Floor, 46 East Ohio Street, Indianapolis, Indiana 46204–1986; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $28.00 (25 cents per page reproduction costs) for each decree and associated appendices, payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 97–15498 Filed 6–12–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993 ''CWRT''—Biofiltration Research Project

Notice is hereby given that, on April 28, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), the Center for Waste Reduction Technologies (''CWRT'') filed notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the joint venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Center for Waste Reduction Technologies, New York, NY; American Institute of Chemical Engineers, New York, NY; CH2M Hill, Inc., Englewood, CO; Cytec Industries Inc., West Patterson, NJ; The Dow Chemical Company, Midland, MI; General Electric Corporation, Schenectady, NY; Merck & Company, Whitehouse Station, NJ; Minnesota Mining and Manufacturing Co., St. Paul, MN; Monsanto Company, St. Louis, MO; Owens Corning, Toledo, OH; Rhone-Poulenc North America, Monmouth Junction, NJ, owned by Phone-Poulenc S.A., Cedex, FRANCE; Rohm and Haas Company, Philadelphia, PA; and Union Carbide Corporation, Danbury, CT.

The nature and objectives of this venture are to secure, assemble, digest, and eventually convert into useful form, data on biofiltration and other processes used or useful to treat air streams containing volatile organic compounds (VOCs), and to evaluate biofiltration and other processes as energy-efficient and low waste alternatives for treating dilute vent streams. This project may proceed through one or more phases depending upon the research results secured and the determination of the participants.

Participation in this joint venture will remain open, and the participants intend to file additional written notifications disclosing all changes in membership. Information regarding participation in this joint venture may be obtained from the Center for Waste Reduction Technologies, 345 East 47th Street, New York, NY 10017–2395.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–15503 Filed 6–12–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—CommerceNet Consortium

Notice is hereby given that, on May 15, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act'') CommerceNet Consortium (''CommerceNet''), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the following organization has joined CommerceNet as a Sponsor Member: Interworld Technology Ventures, Inc., New York, NY. The following organization has joined CommerceNet as a Portfolio Member: Intranet Partners, Santa Clara, CA.

No other changes have been made in either the membership or planned activities of CommerceNet. Membership remains open and CommerceNet intends to file additional written notifications disclosing all changes in membership.

On June 13, 1994, CommerceNet filed its original notification pursuant to § 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to § 6(b) of the Act on August 31, 1994 (59 FR 45012). The last notifications were filed with the Department on March 17 and April 8, 1997. Notices were published in the **Federal Register** on April 29 and May 1, 1997 (62 FR 23266 and 62 FR 23796).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–15500 Filed 6–12–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Consortium for Integrated Intelligent Manufacturing, Planning and Execution

Notice if hereby given that, on May 13, 1997, pursuant to § 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 402 *et seq.* (''the Act''), the Consortium for Integrated Intelligent Manufacturing, Planning and Execution (''CIIMPLEX'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following organizations have joined CIIMPLEX: EnvisionIt Software, Piscataway, NJ; and Intercim Corporation, Burnsville, MN. The following organization has withdrawn its membership from CIIMPLEX: J.D. Edwards.

No changes have been made in the planning activities of CIIMPLEX. Membership remains open, and CIIMPLEX intends to file additional written notifications disclosing all changes in membership.

On April 24, 1996, CIIMPLEX filed its original notification pursuant to § 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to § 6(b) of the Act on May 15, 1996 (61 FR 24514).

Constance K. Robinson,

Director of Operations, Antitrust Divisions.

[FR Doc. 97–15499 Filed 6–12–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; General Cinema Theaters, Inc. and Century Theatres, Inc.

Notice is hereby given that, on September 23, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), General Cinemas Theaters, Inc. and Century Theatres, Inc. have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: General Cinema Theatres, Inc., Chestnut Hill, MA; and Century Theatres, Inc., San Francisco, CA. The nature and objectives of the joint venture are to operate motion picture theaters and entertainment complexes, and businesses related to them or useful in connection with them, in areas of the United States in which neither of the joint venturers currently owns or operates, or has plans to own or operate, a motion picture theater or entertainment complex.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–15501 Filed 6–12–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; the Open Group, L.L.C.

Notice is hereby given that, on April 21, 1997, pursuant to § 6(a) of the National cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), The Open Group, L.L.C. (''TOG'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to § 6(b) of the Act, the identities of the Executive Sponsors of TOG, which are its voting members and which each appoint a representative to the TOG Governing Board, are: Digital Equipment Corporation, Maynard, MA; Fujitsu Limited, Kawasaki, JAPAN; Hewlett-Packard Company, Palo Alto, CA; Hitachi, Ltd., Tokyo, Japan; International Business Machines Corporation, Armonk, NY; NCR Corporation, West Columbia, SC; Novell, Inc., Provo, UT; Siemens Nixdorf Information Systems, Munich, GERMANY; and SunSoft, Inc., Mountain View, CA. The identities of the Participating Sponsors of TOG, which, collectively, are entitled to appoint one representative to the TOG Governing Board are as follows: Silicon Graphics, Inc., Mountain View, CA; and The Santa Cruz Operation, Inc., Santa Cruz, CA.

The identities of the Associate members of TOG, which, by virtue of such status are not entitled to vote or appoint representatives, are as follows: CCTA, Norwich, ENGLAND; Commission of European Communities, Brussels, BELGIUM; Digital Equipment Corp., Nashua, NH; Groupe Bull, Billerica, MA; HP/Apollo, Cupertino, CA; IBM Corp., Austin, TX; Siemens Nisdorf Information Systems, Paderborn, GERMANY; The Mitre Corp., Bedford, MA; Finsiel S.P.A., Rome, ITALY; Sunsoft, Inc., Mountain View, CA; Software AG, Darmstadt, GERMANY; Silicon Graphics, Inc., Mountain View, CA; S.I.A. S.P.A., Milano, ITALY; Hitachi, LTD., Kanagawa-Ken, JAPAN; University of Michigan, Ann Arbor, MI; NASA/Goddard Space Flight Center, Greenbelt, MD; Shell International, Rijswijk, NETHERLANDS; Oracle Corp., Redwood Shores, CA; CSK Corp., Shinjuko-Ku, JAPAN; Innenministerium Nordrhein-Westfalen, Duesseldorf, GERMANY; Boeing Information Services, Seattle, WA; Vople National Transportation Systems Center, Cambridge, MA; CCL/ITRI, Chutung, Hsinchu, TAIWAN; The Santa Cruz Operation, Santa Cruz, CA; British Telecommunication Public Ltd., Co., Ipswich, ENGLAND; National Institutes of Health, Bethesda, MD; Microsoft Corp., Redmond, WA; Internal Revenue Service, Beckley, WV; NCR Corp., Dayton, OH; Gradient Technologies, Inc., Marlbourough, MA; Computer Associates International, Inc., Islandia, NY; Department of Defense-Fort Meade, Fort Meade, MD; Barclay Bank PLC, Knutsford, Cheshire, ENGLAND; Unilever PLC, London, ENGLAND; Tandem Computers, Cupertino, CA; Mitsubishi Electric Corp., Tokyo, JAPAN; Petrotechnical Open Software Corp., Houston, TX; Just Systems Corp., Tokushima-Ken, JAPAN; J.P. Morgan & Co., Inc., New York, NY; Lawrence Livermore National Laboratory, Livermore, CA; Migros Genossenschafts Bund, Zurich, SWITZERLAND; PRC Inc., Mclean, VA; Centre Univ., Luxembourg, LUXEMBOURG; Etis, Brussels, BELGIUM; Veritas Software Corp., Mountain View, CA; Legent Corp., Herndon, VA; Union Bank of Switzerland, Zurich, SWITZERLAND; Bundesamt Fur Informatik, Bern, SWITZERLAND; Merrill Lynch and Co., Inc., New York, NY; Department of Social Security ITSA, Lancs, ENGLAND; Sandia National Laboratories, Livermore, CA; Nippon Telegraph, Yokosuka-Shi, JAPAN; Argonne National Laboratory, Argonne, IL; CSIRO, Division of Information Technology, Melbourne, AUSTRALIA; Novell, Inc., San Jose, CA; The Hong Kong Jockey Club, Happy Valley, HONG KONG; National Health Service, Birmingham, U.K.; Institute for Defense Analyses, Alexandria, VA; Applied Systems Engineering, Lancashire, U.K.; Guide International, Duncan, CA; Hungary Prime Minister's Office, Budapest, HUNGARY; Kapsch Aktiengessellschaft, Vienna, AUSTRIA; Ministerie Van Financien, Apeldoorn, NETHERLANDS; Apple Computer, Cupertino, CA; Elf Aquitaine, Paris, FRANCE; Bull SA, Les Clayes Sous-Bois, FRANCE; Dun & Bradstreet Information Services, Bucks, ENGLAND; The Post Office, Chesterfield, U.K.; Object Management Group, Framingham, MA; Hitachi Data Systems Corp., Santa Clara, CA; Credit Lyonnais, Saint Maurice, FRANCE; INRIA, Le Chesnay, FRANCE; Phillips Petroleum Co., Bartlesville, OK; NASA/Langley Research Center, Hampton, VA; 3M Corp., St. Paul, MN; Michigan Department of Transportation, Lansing, MI; Ministerie Van Verkeer, Delft, NETHERLANDS; National Computerization Agency, Gyeonggi-Do, KOREA; Deutsche Bundespost Telekom, Darmstadt, GERMANY; Intellisoft Corp., Acton, MA; Sycomore S.A., Paris La Defense, FRANCE; NATO CIS Agency, Brussels, BELGIUM; Royal PTT Netherlands NV (KPN), Groningen, NETHERLANDS; Secom Information System Co., Ltd., Mitaka-Ski, Tokyo, JAPAN; Ministry of Defence Dgits, Swindon, ENGLAND; Statskonsult, Oslo, NORWAY; Hughes Applied Information Systems, Landover, MD; Sweden Post, Stockholm, SWEDEN; Telecom Finland Ltd., Helsinki, FINLAND; Mercury Communications Ltd., London, ENGLAND; Tivoli Systems Inc., Austin, TX; Centre for Open Systems, North Sydney, AUSTRALIA; Open Horizon, Inc., South San Francisco, CA; Nippon Steel Corp., Kanagawa, JAPAN; IBM Corporation Japan, Tokyo, JAPAN; OKI Electronic Industry Co., Ltd., Warabi-Shi, JAPAN; Fujitsu Limited, Nakahara-Ku, JAPAN; Naval Research Laboratory, Washington, DC; Dynamic Software AB-Dynasoft, Stockholm, SWEDEN; QA Training Limited, Gloucestershire, U.K.; Juas, Tokyo, JAPAN; Market Vision, Derring, NH; Enterprise Solutions Ltd., Westlake Village, CA; University of Pennsylvania, Philadelphia, PA; Groupe Riche, Hurst, Reading, U.K.; Nihon Unisys, Ltd., Tokyo, JAPAN; NTT Data Communications Systems Corp., Tokyo, JAPAN; Toshiba Corp., Tokyo, JAPAN; Lexis-Nexis, Dayton, OH; Open System Solutions GMBH, Munchen, GERMANY; Digital Equipment Corporation Japan, Tokyo, JAPAN; Mitsubishi Corp., Chiyoda-Ku, JAPAN; North Carolina Office of the State, Raleigh, NC; Jet Propulsion Laboratory, Pasadena, CA; Stanford University, ITSS, Stanford, CA; University of Western Sydney, Kingswood, AUSTRALIA; Candle Corp., Santa Monica, CA; Computerware-Ecosystems Business Group, Campbell, CA; Telefonica I&D; Madrid, SPAIN; Ohio State University, Columbus, OH; Toyota Motor Corp., Toyota, JAPAN; British Columbia Hydro and Power, Vancouver, British Columbia, CANADA; Den Norske Bank, Bergen, NORWAY; Starquest Software, Inc., Berkeley, CA; NASA/Ames Research Center, Moffett Field, CA; Technical University of Budapest, Budapest, HUNGARY; Doxa Informatique, Versailles, FRANCE; Lasermoon Limited, Wickham, U.K.; Financial Services Technology Consortium, Boston, MA; UNIXPROS, Inc., Eatontown, NJ; Visa International, San Francisco, CA; Amdahl Corp., Sunnyvale, CA; Isogon Corp., New York, NY; Centre Informatique du Plan et des; Tunis, TUNISIA; Instruction Set, Inc., Framingham, MA; Kaiser Foundation Health Plan Inc., Pasadena, CA; Deloitte & Touche, Los Angeles, CA; Kredietbank N.V., Brussels, BELGIUM; Home Office Police Department, London, ENGLAND; European Security Forum, London, U.K.; Ematek Informatik GMBH, Cologne, GERMANY; ISSC Inc., (Subsidiary of IBM), Austin, TX; MB&T Migration, Beratung & Training GMBH, Iserlohn-Letmathe, GERMANY; Openit Data AB, Taby, SWEDEN; The Sakura Bank, Ltd., Chiyoda-Ku, JAPAN; Oki Electric Industry Co., Ltd., Warabi-Shi, JAPAN; Isogon Corp., New York, NY; Mitsui & Co., Ltd., Chiyoda-Ku, JAPAN; DISA Center for Standards, Reston, VA; Tivoli Systems Inc., Research Triangle Park, NC; AGIP SPA, San Donato, ITALY; Australian Department of Defence, Canberra, AUSTRALIA; Los Alamos National Laboratory, Los Alamos, NM; Telecom Networks Engineering, Tunis, TUNISIA; Triteal Corp., Carlsbad, CA; Isd Projektmanagement GMBH, Landshut, GERMANY; LC Systems Engineering AG, Horn, SWITZERLAND; Santix Software GMBH, Unterschleisgshein, GERMANY; Collogia Unternehmensberatung GMBH, Koln, GERMANY; Communications Electronics Security, Cheltenham, U.K.; Kadaster Igt, Apeldoorn, NETHERLANDS; Rice University, Houston, TX; WM-DATA Communications AB, Stockholm, SWEDEN; Ministry of Defence, Den Haag, NETHERLANDS; Pohang University of Science & Technology, Pohang, KOREA; Zwister Leven, Amsterdam, NETHERLANDS; Liberty Mutual Insurance Group, Portsmouth, NH; Chase Manhattan Bank, New York, NY; University of Arizona, Tucson, AZ; Cray Research, Inc., Eagan, MN; Lucent Technologies, Holmdel, NJ; Open Environment Corp., Boston, MA; Open Environment Corporation-Europe, Twyford, U.K.; Softway Systems, Inc., San Francisco, CA; Bull K.K., Minato-Ku, JAPAN; VRIJ UIT B.V., Hoofddorp, NETHERLANDS; Prudential Insurance Company, Roseland, NJ; Association for Interactive Media, Washington, DC; Mastercard International Inc., Purchase, NY; Volvo Data AB, Goteborg, SWEDEN; Astec, Inc., Shinjuku-Ku, Tokyo, JAPAN; Clinicomp International, San Diego, CA; Hewlett-Packard Company, Colorado Springs, CO; Hummingbird Communications, Ltd., North York, Ontario, CANADA; IBM Corp., Austin, TX; Jupiter Systems, San Leandro, CA; Netmanage Inc., San Diego, CA; Netmanage Inc., Cupertino, CA; Seaweed Systems Inc., Oakland, CA; Silicon Graphics Inc., Mountain View, CA; Visicom, San Diego, CA; Walker, Richer & Quinn, Inc., Seattle, WA; X Inside, Denver, CO; Digital Equipment Corp., Nashua, NH; Insignia Solutions, High Wycombe, Bucks, U.K.; Metro Link Incorporated, Fort Lauderdale, FL; Global Knowledge Network, Belgium NV/SA, Brussels, BELGIUM; Dascom Incorporated, Santa Cruz, CA; Computer Resource Management Ltd., Newmarket, U.K.; Sunsoft, Inc., Mountain View, CA; Wells Fargo Bank, San Francisco, CA; Chalmers University of Technology, Guteborg, SWEDEN; Openvision, Inc., Cambridge, MA; Barco Chromatics, Tuchker, GA; Siemens Nixdorf Information Systems, Munich, GERMANY; Fujitsu Limited, Yokohama-Shi, Kanagawa, JAPAN; Caterpillar, Inc., East Peoria, IL; Citicorp International Communications, Reston, VA; Information Communication Institute of Singapore, Singapore, SINGAPORE.

TOG's area of planned activity is to engage in the life cycle of open systems research and development activities, including gathering end user and manufacturer requirements, technology research, open systems product planning, facilitating the collaborative production of open systems reference technologies, specifications and test suites, furnishing software support and educational services, and engaging in product marketing and branding. TOG will promote the formulation, development and deployment of open systems technology required to achieve software portability, to encourage interoperability of systems in a multi-vendor environment, and to achieve appropriate levels of consistency in user interface.

Membership in TOG will remain open and TOG will file additional written notifications disclosing all changes in membership.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–15504 Filed 6–12–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice of Pursuant to the National Cooperative Research and Production Act of 1993 Spray Drift Task Force

Notice is hereby given that, on April 21, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *se seq.* (''the Act''), the Spray Drift Task Force has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a merger of two parties to the Spray Drift Task Force Joint Data Development Agreement and the new name of the combined enterprise. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ALSAN Research, Ankey, IA; Gharda Chemicals Ltd., Washington, DC; and Tri Corporation, Houston, TX has become members. Additionally, the following companies have changed their names: (1) Ciba-Geigy Corporation, Greenboro, NC, owned by Ciba-Geigy Ltd. Group, Basel, SWITZERLAND and Sandoz AGRO, Des Plaines, IA have merged to become Novartis Crop Protection, Inc., Greensboro, NC; and (2) Akzo Nobel Chemicals b.v., Arnhem, NETHERLANDS has been acquired by NuFarm Limited, Laverton, North Victoria, AUSTRALIA.

No other changes have been made in either the membership, corporate name, or planned activities of the venture.

On May 15, 1990, the Spray Drift Task Force filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 5, 1990 (55 FR 27701). The last notification was filed with the Department on November 16, 1995. A notice was published in the **Federal Register** on April 8, 1996 (61 FR 15522).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–15502 Filed 6–12–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By notice dated February 21, 1997, and published in the **Federal Register** on March 28, 1997, (62 FR 14946), Knight Seed Company, Inc., 151 W. 126th Street, Burnsville, Minnesota 55337, made application to the Drug Enforcement Administration to be registered as an importer of marihuana (7360), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: May 13, 1997.

Terrance W. Woodworth,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–15454 Filed 6–12–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 16, 1997, Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Dihydromorphine (9145)	I
Pholcodine (9314)	I
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Benzoylecgonine (9180)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273)	II
Morphine (9300)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid extract (9620)	II
Opium tincture (9630)	II
Opium powdered (9639)	II
Opium granulated (9640)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 12, 1997.

Dated: May 7, 1997.

Terrance W. Woodworth,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–15455 Filed 6–12–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 18, 1997, Radian International LLC, 8501 North Mopac Blvd., P.O. Box 201088, Austin, Texas 78720, has made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
Aminorex (1585)	I
4-Methylaminorex (cis isomer) (1590)	I
Methaqualone (2565)	I
Alpha-Ethyltryptamine (7249)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4,5-Trimethoxyamphetamine (7390)	I
4-Bromo-2,5-dimethoxyamphetamine (7391)	I
4-Bromo-2,5-dimethoxyphenethylamine (7392)	I
4-Methyl-2,5-dimethoxyamphetamine (7395)	I
2,5-Dimethoxyamphetamine (7396)	I
2,5-Dimethoxy-4-ethylamphetamine (7399)	I
3,4-Methylenedioxyamphetamine (7400)	I
5-Methoxy-3,4methylenedioxyamphetamine (7401)	I
N-Hydroxy-e,4-methylenedioxyamphetamine (7402)	I
3,4-Methylenedioxy-N-ethylamphetamine (7404)	I
3,4-Methylenedioxymethamphetamine (7405)	I
4-Methoxyamphetamine (7411)	I
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Codeine-N-oxide (9053)	I
Dihydromorphine (9145)	I
Heroin (9200)	I
Morphine-N-oxide (9307)	I
Normorphine (9313)	I
Pholcodine (9314)	I
Acetylmethadol (9601)	I
Allyprodine (9602)	I
Alphacetylmethadol except Levo-Alphacetylmethadol (9603)	I
Alphameprodine (9604)	I
Alphamethadol (9605)	I
Betcetylmethadol (9607)	I
Betameprodine (9608)	I
Betamethadol (9609)	I
Betaprodine (9611)	I
Hydromorphinol (9627)	I
Noracymethadol (9633)	I
Norlevorphanol (9634)	I
Normethadone (9635)	I
Trimeperidine (9646)	I
Para-Fluorofentanyl (9812)	I
3-Methylfentanyl (9813)	I
Alpha-methylfentanyl (9814)	I
Acetyl-alpha-methylfentanyl (9815)	I
Beta-hydroxyfentanyl (9830)	I
Beta-hydroxy-3-methylfentanyl (9831)	I
Alpha-Methylthiofentanyl (9832)	I
3-Methylthiofentanyl (9833)	I
Thiofentanyl (9835)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phenmetrazine (1631)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II

Drug	Schedule
Glutethimide (2550)	II
Nabilone (7379)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
1-Piperidinocyclohexanecarbonitrile (8603)	II
Alphaprodine (9010)	II
Cocaine (9040)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Isomethadone (9226)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Morphine (9300)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The firm plans to manufacture small quantities of the listed controlled substances to make drug reference standards.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 12, 1997.

Dated: May 12, 1997.

Terrance W. Woodworth,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–15456 Filed 6–12–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 10, 1997.

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, Departmental Clearance Officer, Theresa M. O'Malley ((202) 219–5096 ext. 143) or by E–Mail to TOMalley@dol.gov. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

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: Electrical Power Generation, Transmission and Distribution (1910.269); Electrical Protective Equipment (1910.137).

OMB Number: 1218–0190 (reinstatement).

Frequency: On occasion.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 12,074.

Estimated Time Per Respondent: 1 hour.

Total Burden Hours: 40,086.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The certification requirements in the standards on Electrical Power Generation, Transmission and Distribution (1910.269), and Electrical Protective Equipment (1910.137) will allow OSHA compliance officers to determine if employers are complying with the provisions of these standards.

Agency: Departmental Management, Office of the Chief Financial Officer.

Title: Disclosure of Information to Credit Reporting Agencies; Administrative Offset, Interest, Penalties and Administrative Costs.

OMB Number: 1225–0030 (reinstatement).

Frequency: On occasion.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; farms; Federal Government.

Number of Respondents: 3,500.

Estimated Time Per Respondent: 1¾ hours.

Total Burden Hours: 12,250.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): $975.

Description: Information is collected from debtors to assist in determining whether an individual or organization is actually indebted to the Department of Labor, and if so indebted, to evaluate the individual's organization's ability to repay the debt.

Theresa M. O'Malley,

Departmental Clearance Officer.

[FR Doc. 97–15600 Filed 6–12–97; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting Notice

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: June 20, 1997, 10:00 am, U.S. Department of Labor, Room S–1011, 200 Constitution Ave., NW, Washington, D.C. 20210.

Purpose: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Potential U.S. negotiating objectives and bargaining positions in current and anticipated trade negotiations will be discussed. Pursuant to section 9(B) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(9)(B) it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Accordingly, the meeting will be closed to the public.

For further information, contact: Jorge Perez-Lopez, Director, Office of International Economic Affairs, Phone: (202) 219–7597.

Signed at Washington, D.C. this 6th day of June 1997.

Andrew J. Samet,

Acting, Deputy Under Secretary, International Affairs.

[FR Doc. 97–15586 Filed 6–12–97; 8:45 am]

BILLING CODE 4510–28–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of May, 1997.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements or Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–33,258; Corning Consumer Products Co., Martinsburg, WV

TA–W–33,413; J.R. Simplot Co., Heyburn, ID

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–33,431; Nissan Motor Corp., Gardena, CA

TA–W–33,440; Pressman-Gutman Co., Inc., New York, NY

TA–W–33,257; Garland US Range, Parts & Service Department, Freeland, PA

TA–W–33–350; Custom Welding Service, Levelland, TX

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–33,322; Atlantic Power Systems, Inc., Fayetteville, NC

The investigation revealed that the subject firm markets its products through a competitive bidding process. No bids were submitted by foreign firms, and therefore there was no adverse import impact on Atlantic Power Systems, Inc.

TA–W–33,294; Theme Fabrication Co., Vernon, CA

The investigation revealed that separations at Theme Fabrication Co., Vernon, CA were due to a corporate decision to consolidate operations and move production to another existing domestic company facility.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location for each determination references the impact date for all workers for such determination.

TA–W–33,136; Lenox Crystal, Inc., Mt. Pleasant, PA: January 17, 1996.

TA–W–33,402; Snap on Diagnostics/Sunelectric Equiserv, Crystal Lake, IL: April 3, 1996.

TA–W–33,441; Frolic Footwear Co., Russellville, AR: April 8, 1996. TA–W–33,453; Lion's Acquisition Co., Gastonia, NC: April 17, 1996.

TA–W–33,351; Dienese Corp., Spencer, MA: March 17, 1996.

TA–W–33,428; Findlay Refractories Co., Washington, PA: April 2, 1996.

TA–W–33,470; Vision—Ease, Fort Lauderdale, FL: April 21, 1996.

TA–W–33,426; Suckle Corp., Scranton, PA: April 4, 1996.

TA–W–33,282; Dutch Miss, Inc., Lebanon, PA: February 19, 1996.

TA–W–33,245; Mattel, Inc., Murray, KY: May 24, 1996.

TA–W–33,215, A & B; Deckers Outdoor Corp., Carpinteria, CA, Goleta, CA and Ventura, CA: February 7, 1996.

TA–W–33,275; Kings Creek Manufacturing Co., Inc., Ferguson, NC: February 19, 1996.

TA–W–33,461; Amy Group, Inc., York, PA: April 21, 1996.

TA–W–33,357; Allegiance Healthcare Corp., Johnson City, TN: March 6, 1996.

TA–W–33,242; CTS Marden Electronics, Burlington, WI: February 13, 1996.

TA–W–33,253; Hoechst Celanese Corp., Coventry, RI: February 7, 1996.

TA–W–33,314; Eagle Ottawa Leather Co., Grand Haven, MI: March 4, 1996.
TA–W–33,464; Champsion Products, Inc., A Subsidiary of Sara Lee Corp., Atkinson and O'Hara Plants, Clayton, NC: April 17, 1996.
TA–W–33,306 & A: Tecumseh Metals Products, Plant #6, Grand Rapids, MI and Plant #2, Walker, MI: February 12, 1996. 1996.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of May, 1997.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject from to Canada or Mexico during the relevant period.

NAFTA–TAA–01632; Amy Group, Inc., York, PA
NAFTA–TAA–01604; I AM Apparel, Inc., Herrin, IL
NAFTA–TAA–01555; Atlantic Power Systems, Inc., Fayetteville, NC
NAFTA–TAA–01609; J. R. Simplot Co., Heyburn, ID
NAFTA–TAA–01612; Findlay Refractories Co., Washington, PA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–01519; Garland US Range, Parts & Service Department, Freeland, PA

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA–TAA

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

NAFTA–TAA–01651; Louisiana-Pacific Corp., Chilco OSB, Chilco, ID June 5, 1997.
NAFTA–TAA–01646; Coats North America—Talon, Inc., Cleveland, GA: April 21, 1996.
NAFTA–TAA–01628; Champion Products, Inc., A Subsidiary of Sara Lee Corp., Atkinson and O'Hara Plants, Clayton, NC: March 14, 1996.
NAFTA–TAA–01616; Stabilus, Colmar, PA: April 7, 1996. 1997.
NAFTA–TAA–01605; Amelia Dress Co., Inc., Farmville, VA: March 14, 1996.
NAFTA–TAA–01606; Amelia Dress Co., Inc., Appomattox, VA: March 14, 1996.
NAFTA–TAA–01526; Kings Creek Manufacturing Co., Inc., Ferguson, NC: February 19, 1996.
NAFTA–TAA–01567; Deckers Outdoor Corp., Carpinteria, CA: March 7, 1996.
NAFTA–TAA–01568; Deckers Outdoor Corp., Goleta, CA: March 7, 1996.
NAFTA–TAA–01569; Deckers Outdoor Corp., Ventura, CA: March 7, 1996.
NAFTA–TAA–01480; CMT Industries, Inc., El Paso, TX: February 3, 1996.
NAFTA–TAA–01532 & A; Tecumseh Metal Products—Plant #6, Grand Rapids, MI and Plant #*2, Walker, MI: February 12, 1996.*
NAFTA–TAA–01630; Lion's Acquisition Co., Gastonia, NC: April 17, 1996.
NAFTA–TAA–01661; Baldwin Piano & Organ Co., Hammer Production Department, Trumann, AR: May 16, 1996.
NAFTA–TAA–01507; Fibrex, Inc., North Aurora, IL: February 12, 1996.
NAFTA–TAA–01655; C and P Cedar Sales, Copalis Crossing, WA: May 5, 1996.

I hereby certify that the aforementioned determinations were issued during the month of May, 1997. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: May 30, 1997.

Russell T. Kile,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–15595 Filed 6–12–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01341 and TA–W–33,029]

Willamette Industries, Incorporated, Dallas, Oregon; Notice of Revised Determination on Reconsideration

On March 24, 1997, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the **Federal Register** on April 15, 1997 (62 FR 18363).

Investigation findings show that the workers are primarily engaged in the production of plywood. The workers were denied TAA because the ''contributed importantly'' test of the Group Eligibility Requirements of the Trade Act was not met. The workers were denied NAFTA–TAA on the basis that there was no shift in production to Mexico or Canada, nor were there company or customer imports of plywood from Mexico or Canada.

The Oregon AFL–CIO and the Western Council of Industrial Workers Local #2714, United Brotherhood of Carpenters and Joiners of America, submitted additional information showing that increased import competition from foreign made oriented strand board (OSB) contributed to worker separations at the Willamette Industries, Incorporated production facility.

To determine impact of imports of OSB on worker separations at Dallas, the Department conducted a survey on the subject firm's major declining customers. New findings on reconsideration show that some customers continued reliance on or increased imports of OSB from Canada during the time period relevant to the investigation.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that the workers of Willamette Industries, Incorporated, Dallas, Oregon were adversely affected by increased imports of articles like or directly competitive with plywood produced at the subject firm.

''All workers of Willamette Industries, Incorporated, Dallas, Oregon engaged in employment related to the production of plywood, who became totally or partially separated from employment on or after November 13, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade act of 1974;'' and

''All workers of Willamette Industries, Incorporated, Dallas, Oregon engaged in employment related to the production of plywood, who became totally or partially separated from employment on or after November 13, 1995 are eligible to apply for NAFTA–TAA Section 250 of the Trade act of 1974.''

Signed at Washington, D.C. this 28th day of May 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–15591 Filed 6–12–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–32,293 & 293A]

A.H. Schreiber Company, Inc.; Cinnaminson, NJ and New York, New York; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on June 25, 1996, applicable to all workers of A.H. Schreiber Company, Incorporated located in Cinnaminson, New Jersey. The notice was published in the **Federal Register** on July 9, 1996 (61 FR 36085).

At the request of petitioners, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations have occurred at A.H. Schreiber's New York, New York location. The workers in New York provided administrative support services for the productions of ladies' and girls' bathing suits at the Cinnaminson plant.

The intent of the Department's certification is to include all workers of A.H. Schreiber Company, incorporated who were adversely affected by increased imports. Accordingly, the Department is amending the certification to include A.H. Schreiber's workers in New York, New York, providing administrative support services to the subject firm's Cinnaminson, New Jersey plant.

The amended notice applicable to TA–W–32,293 is hereby issued as follows:

All workers of A.H. Schreiber Company, Incorporated, Cinnaminson, New Jersey (TA–W–32,293) and New York, New York (TA–W–32,293A), who became totally or partially separated from employment on or after April 22, 1995, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 2nd day of June 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–15593 Filed 6–12–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–31,936]

Boise Cascade Corporation Paper Division Vancouver, Washington; Notice of Revised Determination on Reconsideration

On July 31, 1996, the Department issued a Notice of Negative Determination Regarding Application on Reconsideration applicable to workers and former workers of the subject firm. The notice was published in the **Federal Register** on August 13, 1996 (61 FR 42059).

The reconsideration resulted in a negative determination because a survey of the subject firm's customers revealed that none of the customers reported purchasing paper from foreign sources during the relevant periods.

On its own motion, the Department reviewed the determination for workers of the subject firm. On review, the Department found that the customer survey conducted for the investigation was limited to those customers purchasing coated and uncoated paper used to make business forms. Other findings show that prior to the closure of Boise Cascade's Paper Division in Vancouver, various paper products accounted for the primary output at the plant. Company officials supplied the Department a list of customers accounting for the sales decline at the subject plant. New findings show that some customers reported increased import purchases of paper products from foreign sources in 1995 compared to 1994, and in January through September 1996 compared to the same time period of 1995.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with paper products, contributed importantly to the declines in sales or production and to the total or partial separation of workers of Boise Cascade Corporation, Paper Division, Vancouver, Washington. In accordance with the provisions of the Act, I make the following certification:

''All workers of Boise Cascade Corporation, Paper Division, Vancouver, Washington who became totally or partially separated by employment on or after September 9, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed in Washington, D.C. this 29th day of May 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office, of Trade Adjustment Assistance.

[FR Doc. 97–15590 Filed 6–12–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–32,935]

Borg Warner Automotive Muncie, Indiana; Notice of Revised Determination on Reconsideration

By application dated February 4, 1997, the company and the UAW Local 287 requested administrative reconsideration of the Department's negative determination regarding worker eligibility to apply for trade adjustment assistance. The denial notice applicable to workers of the subject firm in Muncie, Indiana, was signed on January 22, 1997 and published in the **Federal Register** on February 13, 1997 (62 FR 6803).

A late response to the customer survey conducted by the Department revealed that a customer of the subject firm increased import purchases of rear wheel drive manual transmissions while purchases from the subject firm remained constant.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with rear drive manual transmissions produced by the subject firm contributed importantly to the decline in sales and to the total or partial separation of workers of the subject firm. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of Borg Warner Automotive, Muncie, Indiana who became totally or partially separated from employment on or after November 11, 1995, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 23rd day of May 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–15592 Filed 6–12–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Haggar Clothing Company, TA–W–33,153, a/k/a Brownsville Manufacturing Company, A/K/A McKinney Pant Manufacturing Company, Brownsville, Texas, et al.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on February 21, 1997, applicable to workers of Haggar Clothing Company, also known as Brownsville Manufacturing Company, and also known as McKinney Pant Manufacturing Company located in Brownsville, Texas. The notice was published in the **Federal Register** on March 21, 1997 (62 FR 13710).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. Findings on review show that worker separations have occurred at the subject firm's Edinburgh and Weslaco, Texas locations. The workers produce men's dress and casual pants. The company reports that worker separations have also occurred at the subject firm's Weslaco Cutting Center in Weslaco, Texas.

Workers of the Haggar Clothing Company production facilities in Edinburg and Weslaco, Texas were covered under previous TAA certifications, TA–W–30,850A and TA–W–30,850B, respectively. These certifications expired on May 11, 1997. Workers at the subject firm's Weslaco Cutting Center in Weslaco were not covered under TA–W–30,850B.

The intent of the Department's certification is to include all workers of Haggar Clothing Company who were affected by increased imports. Accordingly, the Department is amending the worker certification to include the workers of Haggar Clothing Company in Edinburgh and Weslaco, Texas, and include workers at the Weslaco Cutting Center in Weslaco, Texas.

The amended notice applicable to TA–W–33,153 is hereby issued as follows:

''All workers of Haggar Clothing Company, also known as Brownsville Manufacturing, also known as McKinney Pant Manufacturing Company, Brownsville, Texas (TA–W–33,153) and Haggar Clothing Company, Weslaco Cutting Center, Weslaco, Texas (TA–W–33,153C) who became totally or partially separated from employment on or after January 13, 1996, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974;'' and

''I further determine that all workers of Haggar Clothing Company, Edinburg Manufacturing Company, also known as Waxahachie Garment Company, Edinburg, Texas (NAFTA–01471A) and Haggar Clothing Company, Weslaco Manufacturing Company, also known as Bowie Manufacturing Company, Weslaco, Texas (NAFTA–01471B), who become totally or partially separated from employment on or after June 7, 1997, are eligible to apply for adjustment assistance under Section 250 of the Trade Act of 1974.''

Signed at Washington, D.C. this 29th day of May 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–15597 Filed 6–12–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,194C]

Hasbro Manufacturing Services, Easley, South Carolina; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 11, 1997, applicable to all workers of Hasbro Manufacturing Services located in Easley, South Carolina. The notice was published in the **Federal Register** on March 31, 1997 (62 FR 15199).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in employment related to the production of toys, games, infant clothing and bibs. The workers producing toys and games at the Easley location had prior TAA eligibility under TA–W–30,676F, which expired January 31, 1997; the workers producing infant clothing and bibs were not covered. The current worker certification, to include all workers of Hasbro Manufacturing Services, Easley, South Carolina established an impact date of February 1, 1997. New information shows that worker separations of those producing infant clothing and bibs at the Easley production facility began prior to February 1, 1997. Therefore, the Department is amending the certification to change the impact date for the workers producing infant clothing and bibs to February 7, 1996, one year prior to the date of the petition for TA–W–33,194C.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports.

The amended notice applicable to TA–W–33,194C is hereby issued as follows:

All workers of Hasbro Manufacturing Services, Easley, South Carolina, engaged in employment related to the production of toys and games, who became totally or partially separated from employment on or after February 1, 1997; and all workers of Hasbro Manufacturing Services, Easley, South Carolina, engaged in employment related to the production of infant clothing and bibs, who became totally or partially separated from employment on or after February 7, 1996, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 23rd day of May 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–15594 Filed 6–12–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,114]

Highland Packaging Company, Bock Pharmacal Distribution Center, St. Louis, Missouri; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Program Manager of the Office of Trade Adjustment Assistance for workers at Highland Packaging Company, Bock Pharmacal Distribution Center, St, Louis, Missouri. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–33,114; Highland Packaging Company, Bock Pharmacal Distribution Center, St. Louis, Missouri (June 3, 1997)

Signed at Washington, D.C. this 4th day of June, 1997.

Russell T. Kile,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–15588 Filed 6–12–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than June 23, 1997.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than June 23, 1997.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 19th day of May, 1997.

Russell T. Kile,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX.—PETITIONS INSTITUTED ON 05/19/97

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
33,487	Medite Corp (Wrks)	Medford, OR	05/05/97	Chips, Veneer, Fiberboard Products.
33,488	Union Oil Co of Calif. (Wrks)	Arroyo Grande, CA	04/18/97	Crude Oil, Distillaties.
33,489	Frigidaire Company (Wrks)	Athens, TN	05/06/97	Gas/Electric Ranges.
33,490	Talon—Cleveland Plant (Comp)	Cleveland, GA	04/21/97	Talon Zippers.
33,491	Coats American (Comp)	Rossville, GA	05/01/97	Industrial Sewing Threads.
33,492	K–D Industries, Inc (Comp)	Blountsville, AL	04/09/97	Children's Sleepwear, Sportswear.
33,493	Honeywell, Inc (UE)	Arlington Hts, IL	05/05/97	Personal Computer Boards.
33,494	Wearever Shirt Co., Inc (Wrks)	New York, NY	05/07/97	Men's Sport Shirts.
33,495	Wearever Shirt Co., Inc (Wrks)	Freeburg, PA	05/07/97	Men's Sport Shirts.
33,496	King Louie International (UFCW)	Auburn, NE	05/09/97	Jackets.
33,497	Big River Luggage (Wrks)	Corpus Christi, TX	05/04/97	Leather Luggage.
33,498	Flextronics Int'l (Wrks)	Richardson, TX	05/09/97	PC Modems.
33,499	Thypin Steel Corp (USWA)	Blasdell, NY	05/02/97	Stainless steel—Bar, Rod, Wire & Tubes.
33,500	Trendline Home Fashions (Wrks)	Miami, FL	05/05/97	Decorative Pillows, Chair Pads.
33,501	Power Systems, Inc (Comp)	Bloomfield, CT	05/05/97	Custom Designed Power Supplies.
33,502	Power Guard (Comp)	Opelika, AL	04/27/97	Power Supplies.
33,503	Jasper Textiles, Inc (Comp)	Freemont, NC	05/07/97	Knit Shirts.
33,504	ABL Engineering, Inc (Comp)	Mentor, OH	05/09/97	Digital Video Transmission Equipment.
33,505	Levolor Home Fashions (Wrks)	Santa Monica, CA	05/07/97	Window Blinds.
33,506	Louisiana-Pacific Corp (Comp)	Athol, ID	05/07/97	Oriented Strand Boards.
33,507	Guardian Industries Corp (ABGWU)	Falconer, NY	05/06/97	Mirrors.

[FR Doc. 97–15596 Filed 6–12–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than June 23, 1997.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than June 23, 1997.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 27th day of May, 1997.

Russel T. Kile,

Program Manager, Policy & Reemployment Service, Office of Trade Adjustment Assistance.

APPENDIX—PETITIONS INSTITUTED ON 05/27/97

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
33,508	SPX Corporation (Wkrs)	Dowagiac, MI	05/06/97	Brake Booster Housing.
33,509	Church and Dwight Co. (USWA)	Syracuse, NY	05/15/97	Ammonium Bi Carbonate.
33,510	A G Pants (Co.)	Perkasie, PA	05/12/97	Men's Pants.
33,511	Philips Display Component (IBEW)	Ottawa, OH	05/13/97	19 Inch Color T.V. Tubes.
33,512	Joy Mining Machinery (IAMAW)	Franklin, PA	05/15/97	Mining Machinery.
33,513	Levi Straus (Wkrs)	El Paso, TX	05/13/97	Jeans.
33,514	Springs Industries, Inc. (Wkrs)	Kershaw, SC	05/12/97	Sheet Cloth.
33,515	ICI Aerospace (Co.)	Tamaqua, PA	05/14/97	Igniters for Air Bags.
33,516	Brown and Bigelow, Inc. (GCU)	St. Paul, MN	05/08/97	Calendars and Playing Cards.
33,517	Jackson Mills, Inc. (Co.)	Wellford, SC	05/14/97	Woven Greige Fabric.
33,518	Yarnell Fabrics (Wkrs)	New York, NY	05/08/97	Polyester & Rayon Print Fabrics.
33,519	Hayes Wheels Int'l (UAW)	Romulus, MI	05/09/97	Fabricated Welded Steel Wheels.
33,520	Delta Apparel (Co.)	Sandersville, GA	05/09/97	Tee Shirts.
33,521	Boise Cascade Corp. (WCIW)	Yakima, WA	05/14/97	Dimension Lumber & Plywood.
33,522	North Safety Products (Co.)	Cranston, RI	05/14/97	Respiratory Protective Devices.
33,523	Nu-Kote (Co.)	Connellsville, PA	05/13/97	Electrostatic Toners.
33,524	Standard Industries (IUE)	San Antonio, TX	05/12/97	Automobile Batteries.
33,525	Xerox Corp. (Wkrs)	Oklahoma City, OK	04/29/97	Photorecptors.

[FR Doc. 97–15589 Filed 6–12–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,133]

Watauga Industries Elizabethton, Tennessee; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Program Manager of the Office of Trade Adjustment Assistance for workers at Watauga Industries, Elizabethton, Tennessee. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–33,133; Watauga Industries, Elizabethton, Tennessee (June 3, 1997)

Signed at Washington, D.C. this 4th day of June, 1997.

Russell T. Kile,

Program Manger, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–15587 Filed 6–12–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01471 & 01471A & 01471B & 01471C]

Haggar Clothing Company, et al.; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on February 21, 1997, applicable to all workers of Haggar Clothing Company, also known as Brownsville Manufacturing Company, and also known as McKinney Pant Manufacturing Company located in

Brownsville, Texas. The notice was published in the **Federal Register** on March 21, 1997 (62 FR 13711).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. Findings on review show that worker separations have occurred at the subject firm's Edinburgh and Weslaco, Texas locations. The workers produce men's dress and casual pants. The company reports that worker separations have also occurred at the subject firm's Weslaco Cutting Center in Weslaco, Texas.

Workers of the Haggar Clothing Company production facilities in Edinburg and Weslaco, Texas are covered under previous NAFTA–TAA certifications, NAFTA–00444A and NAFTA–00444B, respectively. These certifications will expire on June 7, 1997. Workers at the subject firm's Weslaco Cutting Center in Weslaco are not covered under NAFTA–00444B.

The intent of the Department's certification is to include all workers of Haggar Clothing Company who were affected by increased imports from Mexico or Canada. Accordingly, the Department is amending the worker certification to include the workers of Haggar Clothing Company in Edinburgh and Weslaco, Texas, and include workers at the Weslaco Cutting Center in Weslaco, Texas.

The amended notice applicable to NAFTA–01471 is hereby issued as follows:

''All workers of Haggar Clothing Company, also known as Brownsville Manufacturing, also known as McKinney Pant Manufacturing Company, Brownsville, Texas (NAFTA–01471) and Haggar Clothing Company, Weslaco Cutting Center, Weslaco, Texas (NAFTA–01471C), who became totally or partially separated from employment on or after January 13, 1996, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974;'' and

''I further determine that all workers of Haggar Clothing Company, Edinburg Manufacturing Company, also known as Waxahachie Garment Company, Edinburg, Texas (TA–W–33,153A) and Haggar Clothing Company, Weslaco Manufacturing Company, also known as Bowie Manufacturing Company, Weslaco, Texas (TA–W–33,153B), who became totally or partially separated from employment on or after May 11, 1997, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C. this 29th day of May 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–15598 Filed 6–12–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Statewide Service Delivery Area Job Training Plan; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed reinstatement collection of the Statewide Service Delivery Area Job Training Plan (JTP).

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before August 12, 1997.

The Department of Labor 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.

ADDRESSES: Barbara DeVeaux, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, N.W., Room N4670, Washington, D.C. 20210; Internet Address: DeVeauxB@DOLETA.GOV; telephone number (202) 219–7533, extension 165 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to Section 105(d) of the Job Training Reform Amendments of 1992 (Public Law 102–367, September 7, 1992, effective July 1, 1993) requires that in any case in which one statewide service delivery area is established, the Governor shall submit a job training plan to the Secretary of Labor for approval.

II. Current Actions

States are required to submit a Statewide JTP biennially.

Type of Review: Reinstatement without change.

Agency: Employment and Training Administration.

Title: Statewide Service Delivery Area Job Training Plan.

OMB Number: 1205–0329.

Recordkeeping: These records must be kept for a minimum of three years after the affected program dates.

Affected Public: State and local government.

Total Respondents: 15.

Frequency: Biennially.

Total responses: 15.

Average Time per Response: 10 burden hours.

Estimated Total Burden Hours: 150.

Total Burden Cost (capital/startup): Federal cost of $11,000. This represents 20 percent of a GS–13 salary. It is estimated that a GS–13 will spend 20 percent of his/her time on the preparation clearance and dissemination of the Statewide JTP.

State cost of $220 per submission. The individual preparing the request is likely to be earning $45,000 per year or $22.00 per hour times 10 hours of preparation.

Total Burden Cost (operating/maintaining): Burden cost for operating and maintaining is the amount of money allowed for the administration of JTPA.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 6, 1997.

Charles Atkinson,

Deputy Administrator, Office of Job Training Programs.

[FR Doc. 97–15599 Filed 6–12–97; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (97–085)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Fusion Systems Corporation of Rockville, MD 20855, has applied for a partially exclusive license to practice the inventions described and claimed in NASA Case Numbers LAR 14448–1–SB, entitled ''Lightweight Protective Coating,'' and LAR 1448–3–SB, entitled ''Multi-Layer Light-Weight Protective Coating and Method for Application, for which United States Patent Applications were filed by 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 NASA Langley Research Center.

DATES: Responses to this notice must be received by August 12, 1997.

FOR FURTHER INFORMATION CONTACT: Kimberly A. Chasteen, Patent Attorney, NASA Langley Research Center, Mail Stop 212, Hampton, VA 23681–0001, telephone (757) 864–3227; fax (757) 864–9190.

Dated: June 6, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97–15619 Filed 6–12–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (97–086)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Horton's Orthotic Lab, Inc., of Little Rock, Arkansas, has applied for an exclusive license to practice U.S. Patent No. 5,490,831, entitled ''Selectively Lockable Knee Brace,'' 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 Marshall Space Flight Center.

DATES: Responses to this notice must be received by August 12, 1997.

FOR FURTHER INFORMATION CONTACT: Robert L. Broad, Jr., Patent Counsel, Marshall Space Flight Center, Mail Stop CC01, Marshall Space Flight Center, AL 35812; telephone (205) 544–0021.

Dated: June 6, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97–15620 Filed 6–12–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (97–081)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: NASA hereby gives notice that Howard Industries, Inc., of 1840 Progress Avenue, Columbus, Ohio 43207 has applied for a partially exclusive license to practice the invention described and claimed in U.S. Patent No. 5,373, 110, entitled ''Ion Exchange Polymer and Method of Making,'' in the following fields of use: 1) to create testing kits to identify the presence and concentrations of heavy metals in aqueous solutions; and 2) to extract precious or heavy metals from raw or partially refined ore and recover precious metals from refining and/or plating processes. Said patent 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 Lewis Research Center.

DATE: Responses to this notice must be received by August 12, 1997.

FOR FURTHER INFORMATION CONTACT: Kent N. Stone, Patent Attorney, NASA Lewis Research Center, Mail Code 500–118, Cleveland, OH 44135, telephone (216) 433–8855.

Dated: June 6, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97–15615 Filed 6–12–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice No. 97–082]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: NASA hereby gives notice that PRAXAIR, Inc., of 39 Old Ridge Berry Road, Danbury, CT 06810–5113, has applied for an exclusive license to practice the invention described and claimed in U.S. Patent Nos. 4,917,302, entitled ''High Temperature Flexible Seal''; 5,014,917, entitled ''High Temperature Flexible, Thermal Barrier Seal'' and 5,082,293, entitled ''High Temperature Flexible, Fiber-Preform Seal,'' which are 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 to PRAXAIR, Inc., should be sent to Lewis Research Center.

DATE: Responses to this notice must be received by August 12, 1997.

FOR FURTHER INFORMATION CONTACT: Kent N. Stone, Patent Attorney, NASA Lewis Research Center, Mail Stop 500–118, Cleveland, OH 44135, telephone (216) 433–8855.

Dated: June 6, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97–15616 Filed 6–12–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice No. 97–084]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License

SUMMARY: NASA hereby gives notice that University of Pittsburgh of Pittsburgh, PA 15260, has applied for an exclusive license to practice the invention described and claimed in NASA Case No. LAR 15637–1, entitled ''Magnetically Suspended Miniature Fluid Pump and Method of Making Same,'' for which a U.S. Patent Application was filed by the University of Pittsburgh and 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 NASA Langley Research Center.

DATES: Responses to this notice must be received by August 12, 1997.

FOR FURTHER INFORMATION CONTACT: George F. Helfrich, Patent Counsel, NASA Langley Research Center, Mail Stop 212, Hampton, VA 23681–0001; telephone (757) 864–9260, fax (757) 864–9190.

Dated: June 6, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97–15618 Filed 6–12–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97–083]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice of intent that Virginia Power, the primary subsidiary of Dominion resources Incorporated (DRI), of Glen Allen, Virginia 23060, has applied for an exclusive license to practice the inventions described and claimed in NASA Case Numbers: LAR 15205–1, entitled ''Tough, Soluble, Aromatic, Thermoplastic Copolymides''; LAR 15205–2, ENTITLED ''Process for Preparing Tough, Soluble, Thermoplastic Copolymides'', LAR 15387–1, entitled Process for Preparing an Ultra-Thin, Adhesiveless, Multi-Layered, Patterned Polymer Substrate''; LAR 15463–1–SB, entitled Molded Magnetic Article and Method of Fabrication''; LAR 15065–1, entitled ''Piezoelectric Pump.'' LAR 15407–1, entitled ''Piezoelectric, Active, Fluid Flow Control Valve''; and LAR 15664–1, entitled ''Ferroelectric Stirling-Cycle Refrigerator'' for which U.S. Patent Applications were filed by 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 Langley Research Center.

DATES: Responses to this notice must be received by August 12, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Robin W. Edwards, Patent Attorney, NASA Langley Research Center, Mail Stop 212, Hampton, VA 23681–0001, telephone (757) 864–3230; fax (757) 864–9190.

Dated: June 6, 1997.

Edward A. Frankle,

General Counsel.

[FR. Doc. 97–15617 Filed 6–12–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services.

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). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that propose the destruction of records not previously authorized for disposal, or reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before July 28, 1997. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Civilian Appraisal Staff (NWRC), National Archives and Records Administration, College Park, MD 20740–6001. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

FOR FURTHER INFORMATION CONTACT: Michael L. Miller, Director, Records Management Programs, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001, telephone (301) 713–7110.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account 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 historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Justice, United States Marshals Service (N1–527–97–9). District office audit reports and work papers.
2. Department of Transportation, Maritime Administration (N1–357–96–1). Reduced retentions for foreign crew manifest and manning estimates.
3. Department of Transportation, Maritime Administration (N1–357–96–2). Reduced retentions for cost reports, foreign wage estimates, wage agreements, and payroll.
4. Department of Transportation, Maritime Administration (N1–357–96–3). Foreign costs program files.
5. Department of Transportation, Maritime Administration (N1–357–96–4). U.S. wage costs program subject files.
6. Department of Transportation, Maritime Administration (N1–357–96–5). Reduced retentions for subsidy insurance rates.
7. Department of the Treasury, U.S. Customs Service (N1–36–97–1). Reduction in the retention period for Customs declarations forms (CF 6059B) for free declarations.

8. Department of Veterans Affairs, Veterans Benefits Administration (N1–15–97–5). Chapter 30—Montgomery GI Bill Active Duty Educational Assistance Program, and Chapter 34 educational assistance application folders.

9. Federal Emergency Management Agency (N1–311–97–1). Regional nuclear power plant docket case files (headquarters files will be preserved).

10. The President's Committee on the Arts and the Humanities (N1–220–96–13). Facilitative records, routine correspondence and working papers (substantive program records are designated for permanent retention).

11. Securities and Exchange Commission (N1–266–97–3). Chronological correspondence and project files of the Office of Information Technology and its organizational predecessor, the Office of EDGAR Management.

12. Tennessee Valley Authority (N1–142–97–9). Aircraft equipment maintenance records.

Dated: June 8, 1997.

Michael J. Kurtz,

Assistant Archivist for Record Services, Washington, DC.

[FR Doc. 97–15574 Filed 6–12–97; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Privacy Act of 1974; Revisions to Systems of Records

AGENCY: National Credit Union Administration.

ACTION: Notification of a revised system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the National Credit Union Administration (NCUA) is issuing public notice of its intent to modify the system of records maintained by the Office of Human Resources (OHR), NCUA–1, currently titled, ''Employee Security Investigations Containing Adverse Information, NCUA.'' The proposed modifications will: Rename the system ''Employee Suitability and Security Investigations Containing Adverse Information;'' change the system location to Office of Human Resources, NCUA, 1775 Duke Street, Alexandria, VA. 22314–3428; revise the routine uses of records; change the timeframe for retention and disposal of records; change the system manager and address to reflect NCUA's current address.

EFFECTIVE DATE: The proposed changes will be effective without further notice on July 14, 1997, unless comments postmarked on or before that date result in a contrary determination.

ADDRESSES: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA. 22314–3428. Mail or hand deliver comments to: NCUA, 1775 Duke Street, Alexandria, VA. 22314–3428. Fax comments to (703) 518–6319. E-mail comments to Boardmail @ NCUA.gov. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: Dorothy W. Foster, Director of Human Resources, Office of Human Resources, National Credit Union Administration, 1775 Duke Street, Alexandria, VA. 22314–3428, telephone (703) 518–6510.

NCUA–1

SYSTEM NAME:

Employee Suitability and Security Investigations Containing Adverse Information, NCUA.

SYSTEM LOCATION:

Office of Human Resources, National Credit Union Administration, 1775 Duke Street, Alexandria, VA. 22314–3428.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NCUA employees on whom a routine Office of Personnel Management (OPM) security investigation has been conducted, the results of which contain adverse information.

CATEGORIES OF RECORDS IN THE SYSTEM:

Arrest records and/or information on moral character, integrity, or loyalty to the United States.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Records maintained pursuant to OPM requirements. A separate notice is published because these records are maintained separately to provide extraordinary safeguards against unwarranted access and disclosures.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Records are reviewed by the NCUA Security Officer (the Director of Human Resources). If the records are determined to be of a substantive nature, they are referred to the appropriate Associate Regional Director or Office Director for whatever action, if any, is deemed necessary. (2) Standard routine uses as set forth in Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper hard copy.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Records are maintained in a locked file cabinet accessible only to the Security Officer and his/her designated assistant.

RETENTION AND DISPOSAL:

If the investigation is favorable to the employee, the record is destroyed. If the investigation uncovers adverse information, the record is held for two years.

SYSTEM MANAGER(S) AND ADDRESS:

Security Officer, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to the individual by addressing a request in person or by mail to the system manager listed above. If there is no record on the individual, the individual will be so advised.

RECORD ACCESS PROCEDURE:

Upon request, the system manager will set forth the procedures for gaining access to available records.

CONTESTING RECORD PROCEDURES:

Requests to amend or correct a record should be directed to the system manager listed above.

RECORD SOURCE CATEGORIES:

OPM Security Investigations Index, FBI Headquarters investigative files, fingerprint index of arrest records, Defense Central Index of Investigations, employers within the last five years, listed references, and personal associates, school registrars and responsive law enforcement agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

In addition to any exemption to which this system is subject by Notices published by or regulations promulgated by the OPM, the system is subject to a specific exemption pursuant to 5 U.S.C. 552a(k)(5) to the extent that disclosures would reveal a source who furnished information under an express promise of confidentiality, or prior to September 27, 1975, under an express or implied promise of confidentiality.

By the National Credit Union Administration Board on this 3rd day of June 1997.

Becky Baker,

Secretary of the Board.

[FR Doc. 97–15552 Filed 6–12–97; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreement for the Development of a ''Cultural Star Cities'' Program

AGENCY: National Endowment for the Arts.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts will request proposals leading to the award of a Cooperative Agreement for the development of a business plan to create a ''Cultural Star Cities Program'' (working title only) in the United States, similar to the European City of Culture Program, and a Strategy for Implementation. The plan would include administration, costs, and incentives. The work will include: researching the effectiveness and value of the European Cultural Capital Program; researching comparable award programs both in the United States and elsewhere; identifying potential partners; and, preparing a plan to implement the program in the United States. Those interested in receiving the Solicitation should reference Program Solicitation PS 97–02 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 97–02 is scheduled for release approximately June 30, 1997 with proposals due on August 15, 1997.

ADDRESSES: Requests for the Solicitation should be addressed to National Endowment for the Arts, Grants & Contracts Office, Room 618, 1100 Pennsylvania Ave., NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT:

William I. Hummel, Grants and Contracts Office, National Endowment for the Arts, 1100 Pennsylvania Ave., NW. Washington, DC 20506 (202/682–5482).

William I. Hummel,

Coordinator, Cooperative Agreements and Contracts.

[FR Doc. 97–15496 Filed 6–12–97; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL GAMBLING IMPACT STUDY COMMISSION

Meeting

AGENCY: National Gambling Impact Study Commission.

ACTION: Notice of public meeting.

Time and Date: Friday, June 20, 1997; 8:30 a.m. to 2:00 p.m.

Place: The meeting site will be in room 3208, ast Promenade, 490 L'Enfant Plaza, SW, Washington, DC 20407.

Status: The meeting will be open to the public from 8:30 a.m.–11:00 a.m. and from 11:45 a.m.–2:00 p.m. The meeting will be closed from 11:00 a.m.–11:45 a.m. for purposes of personnel discussion.

Notice: At its inaugural public meeting, the National Gambling Impact Study Commission established under Public Law 104–169, dated August 3, 1996, will consider general administrative matters and substantive agenda items, including a report on previous gambling studies, legislative intent and the Commission workplan.

Contact Persons: For further information, contact Kay C. James, Chair at (757) 579–4682 or write to 1000 Regent University Drive, Virginia Beach, VA 23464. Please note: The address and telephone number listed for the Commission are temporary. Information concerning the new address and telephone number will be available at the meeting.

Kay C. James,

Chair.

[FR Doc. 97–15543 Filed 6–12–97; 8:45 am]

BILLING CODE 6820–ET–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8905-MLA; ASLBP No. 97–728–04-MLA]

Quivira Mining Company; Designation of Presiding Officer

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.1207 of the Commission's Regulations, a single member of the Atomic Safety and Licensing Board Panel is hereby designated to rule on petitions for leave to intervene and/or requests for hearing and, if necessary, to serve as the Presiding Officer to conduct an informal adjudicatory hearing in the following proceeding.

Quivira Mining Company

(License Amendment)

The hearing, if granted, will be conducted pursuant to 10 CFR Subpart L of the Commission's Regulations, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings.'' This proceeding concerns a request for hearing submitted by Envirocare of Utah, Inc. on the amendment to the Source Material License SUA–1473 of Quivira Mining Company. The license amendment would allow Quivira Mining to accept 11e.(2) material for disposal at its Ambrosia Lake uranium mill and tailings site located near Grants, New Mexico.

The Presiding Officer in this proceeding is Administrative Judge Charles Bechhoefer. Pursuant to the provisions of 10 CFR 2.722, Administrative Judge Peter S. Lam has been appointed to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents and other materials shall be filed with Judge Bechhoefer and Judge Lam in accordance with 10 CFR 2.701. Their addresses are:

Administrative Judge Charles Bechhoefer, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Dr. Peter S. Lam, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Issued at Rockville, Maryland, this 6th day of June 1997.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 97–15515 Filed 6–12–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–271]

In the Matter of Vermont Yankee Nuclear Power Corporation; (Vermont Yankee Nuclear Power Station))

Exemption

The Vermont Yankee Nuclear Power Corporation (the licensee) is the holder of Facility Operating License No. DPR–28, which authorizes operation of the Vermont Yankee Nuclear Power Station (the facility) at power levels no greater than 1593 megawatts thermal. The facility is a single-unit boiling-water reactor located at the licensee's site in Windham County, Vermont.

The License provides, among other things, that the Vermont Yankee Nuclear Power Station is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II.

On November 19, 1980, the Commission published a revised Section 10 CFR 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants. The revised Section 50.48 and Appendix R became effective on February 17, 1981. Section III of Appendix R contains 15 subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. Subsection III.G is the subject of the licensee's exemption request. Paragraph III.G.2.c of Section III.G, ''Fire Protection of Safe Shutdown Capability,'' of Appendix R to 10 CFR part 50, requires the following:

Enclosure of cable and equipment and associated non-safety circuits of one redundant train in a fire barrier having a 1-hour fire rating. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area.

The licensee requested an exemption from these requirements to allow the use of fire-resistant cables in the cable vault instead of enclosing the cables in fire barriers having a 1-hour fire resistance rating. An exemption is needed because the Firezone R cables do not meet the literal requirements of the regulation. Installation of fire detectors and an automatic fire suppression system is not part of this exemption.

III.

By letter dated May 28, 1996, as supplemented by letters dated July 26 and November 15, 1996, the licensee requested an exemption from Section III.G of Appendix R. In particular, the licensee requested an exemption from the requirements of Section III.G.2.c to allow the use of fire-resistant cables instead of enclosing the cables in fire barriers having a 1-hour fire resistance rating. The licensee proposed to use Rockbestos Firezone R Appendix R fireproof cable to control equipment that is necessary to ensure cooling of the corner room of the Reactor Building in the event of a fire in the cable vault. The cables of concern consist of four stainless steel steathed cables. The Rockbestos Firezone R Appendix R fireproof cable has been tested by Underwriters Laboratories (UL) Inc., in order to provide data on the electrical characteristics of the fire resistant cable under controlled fire exposure conditions and during an extended cool down period. The staff concluded that the cables as they were installed were bounded by the UL fire test, used to justify the 1-hour rating of the cables. Based on the automatic detection and suppression systems provided for the area, and fire brigade response for manual fire fighting activities, there is reasonable assurance that postulated fires in the Cable Vault would be detected, controlled, and extinguished prior to temperatures rising to a level that could challenge structural support capabilities of the fire resistant cables, cable tray network, and overhead conduit. Following from the discussion above, and on the bases of the same cable construction for the tested and installed cables, the test results for the Firezone R cable as contained in the UL report, and the installed and tested configurations for the cables, the staff concludes that the installed Firezone R cables provide an equivalent electrical functionality as would be provided by enclosing cables in a 1-hour fire rated barrier in the licensee's specific application. On the basis of the staff's review of the information provided by the licensee, the staff has concluded that the Firezone R cables proposed by the licensee will remain functional during postulated fires at Vermont Yankee and, therefore, postulated fires would not prevent plant operators from achieving and maintaining safe shutdown. The staff concluded, therefore, that the use of the Firezone R cables at Vermont Yankee in lieu of a 1-hour fire-rated barrier satisfies the underlying purpose of Section III.G.2.c of Appendix R to 10 CFR Part 50. Therefore, the licensee's request for exemption from Section III.G.2.c of Appendix R to 10 CFR part 50 should be granted.

IV.

Pursuant to 10 CFR 50.12(a)(2), the Commission will not consider granting an exemption except under special circumstances. Under subsection (a)(2)(ii), special circumstances are present whenever application of the subject regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

The underlying purpose of Section III.G of Appendix R is to establish fire protection features such that the plant will maintain the ability to perform safe shutdown functions in the event of a fire. The staff has reviewed the proposed alternative and has concluded, as previously described, that use of Firezone R cables in lieu of a 1-hour fire-rated barrier ensures that one train of systems that is necessary to achieve and maintain hot shutdown is free of fire damage. Therefore, the staff concludes that special circumstances exist for the licensee's requested exemption in that imposition of the literal requirements of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of Appendix R to 10 CFR part 50.

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12(a)(2)(ii), special circumstances exist in that use of Firezone R cables in lieu of a 1-hour fire-rated barrier in the cable vault satisfies the underlying purpose of Appendix R to 10 CFR part 50. Further, the staff has concluded that the requested exemption is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security. Therefore, the Commission hereby grants the exemption request from the requirements of Section III.G of Appendix R to 10 CFR Part 50 described in Section III above.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of this exemption will have no significant impact on the quality of the human environment (62 FR 30357).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 9th day of June 1997.

For the Nuclear Reactor Regulation.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–15516 Filed 6–12–97; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Interest Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or are derivable from rates published elsewhere), but are collected

and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's home page (http://www.pbgc.gov).

DATES: The interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in June 1997. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in July 1997.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate in determining a single-employer plan's variable-rate premium. The rate is a specified percentage (currently 80 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the ''premium payment year''). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

The assumed interest rate to be used in determining variable-rate premiums for premium payment years beginning in June 1997 (*i.e.*, 80 percent of the yield figure for May 1997) is 5.55 percent. The following table lists the assumed interest rates to be used in determining variable-rate premiums for premium payment years beginning between July 1996 and June 1997.

For premium payment years beginning in	The required interest rate is
July 1996	5.65
August 1996	5.62
September 1996	5.47
October 1996	5.62
November 1996	5.45
December 1996	5.18
January 1997	5.24
February 1997	5.46
March 1997	5.35
April 1997	5.54
May 1997	5.67
June 1997	5.55

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in July 1997 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, D.C., on this 6th day of June 1997.

John Seal,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 97–15459 Filed 6–12–97; 8:45 am]

BILLING CODE 7708–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Employee Representatives' Status and Compensation Reports.

(2) *Form(s) submitted:* DC–2a, DC–2.

(3) *OMB Number:* 3220–0014.

(4) *Expiration date of current OMB clearance:* 7/31/1997.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Business or other for profit.

(7) *Estimated annual number of respondents:* 85.

(8) *Total annual responses:* 85.

(9) *Total annual reporting hours:* 43.

(10) *Collection description:* Benefits are provided under the Railroad Retirement Act (RRA) for individuals who are employee representatives as defined in section 1 of the RRA. The collection obtains information regarding the status of such individuals and their compensation.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 97–15490 Filed 6–12–97; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Extension

Rule 17f–1(b)
SEC File No. 270–28 OMB Control No. 3235–0032

Rule 17f–1(c) and Form X–17F–1A
SEC File No. 270–29 OMB Control No. 3235–0037

Rule 17h–1T and 17h–2
SEC File No. 270–359 OMB Control No. 3235–0410

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 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 collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

• Rule 17f–1(b) Requirements for reporting and inquiry with respect to missing, lost, counterfeit, or stolen securities.

Rule 17f–1(b) requires approximately 19,000 entities in the securities industry to register in the Lost and Stolen Securities Program. Registration fulfills a statutory requirement that entities report and inquire about missing, lost, counterfeit, or stolen securities. Registration also allows entities in the securities industry to gain access to a confidential data base that stores information for the Program.

It is estimated that 600 respondents will register in the Lost and Stolen Securities Program annually. It is also estimated that each respondent will register one time. The average number of hours necessary to comply with the Rule 17f–1(b) is one-half hour. The total annual burden is 300 hours for respondents, based upon past submissions. The cost per hour is approximately $30. Therefore, the total cost of compliance for respondents is $9,000.

Rule 17f–1(c) and Form X–17F–1A Reporting of missing, lost, stolen, or counterfeit securities.

Rule 17f–1(c) requires approximately 23,000 entities in the securities industry to report lost, stolen, missing, or counterfeit securities to a central database, Form X–17F–1A facilitates the accurate reporting and precise and immediate data entry into the central database. Reporting to the central database fulfills a statutory requirement that reporting institutions report and inquire about missing, lost, counterfeit, or stolen securities. Reporting to the central database also allows reporting institutions to gain access to the database that stores information for the Lost and Stolen Securities Program.

It is estimated that 23,000 reporting institutions will report that securities are either missing, lost, counterfeit, or stolen annually. It is also estimated that each reporting institution will submit this report 29 times each year. The average amount of time necessary to comply with Rule 17f–1(c) and Form X–17F–1A is five minutes. The total annual burden is 55,583 hours for respondents, based upon past submissions. The average cost per hour is approximately $30. Therefore, the total cost of compliance for respondents is $1,667,490.

• Rules 17h–1T and 17h–2T Risk Assessment Recordkeeping and Reporting Requirements for Associated Persons of Brokers and Dealers.

Rules 17h–1T and 17h–2T require certain broker-dealers to maintain and file with the Commission certain records relating to the activities of affiliates whose business activities are reasonably likely to have a material impact on the broker-dealers. These rules enable the Commission to gather complete and timely information about the activities of broker-dealer affiliates in a form necessary for surveillance, enforcement, and other regulatory purposes. The Commission uses this information to assess the potentially damaging impact of the activities of associated persons on registered broker-dealers.

It is estimated that approximately 250 respondents will maintain and report information under these rules on a quarterly basis. The average number of hours necessary to comply with Rules 17h–1T and 17h–2T is six hours per quarter. The total annual burden is 6,000 hours for respondents, based upon past submissions. The cost per hour is approximately $416.67. Therefore, the total cost of compliance for respondents is $2,5000,000 (6,000 total hours multiplied by $416.67).

The information required by the Rules must be maintained and preserved by the respondents for a period of not less than three years in an easily accessible place. In addition, it is mandatory for broker-dealers subject to Rules 17h–1T and 17h–2T to maintain and file the information required by the Rules. All information received by the Commission pursuant to the Rules is kept confidential. Finally, the public should be aware that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written 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 estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing 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 5th Street, N.W., Washington, DC 20549.

Dated: June 5, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–15468 Filed 6–12–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26726]

Filing Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

June 10, 1997.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 27, 1997, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (b) affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Unitil Corporation et al. (70–9053)

Unitil Corporation (''Unitil''), a registered holding company under the Act, and its subsidiary companies, Concord Electric Company, Exeter & Hampton Electric Company, Fitchburg Gas and Electric Light Company (''Fitchburg''), Unitil Power Corp., Unitil Realty Corp., Unitil Resources, Inc. and Unitil Service Corp. (''Unitil Service'') (collectively, the ''Subsidiaries''), all at 6 Liberty Lane West, Hampton, New Hampshire 03842, have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 43 and 45 thereunder.

By order dated July 11, 1995 (HCAR No. 26328), the applicants were authorized to make unsecured short-term borrowings and to operate a system money pool (''Money Pool'') through June 30, 1997. UNITIL and Fitchburg now request authority through June 30, 2000 to incur short-term borrowings from banks. The aggregate amount of short-term borrowings by UNITIL would not exceed $25 million. Also, Fitchburg requests authority to incur short term borrowings from UNITIL and the other Subsidiaries, and UNITIL and the other Subsidiaries request authority to lend funds to Fitchburg under the UNITIL system money pool, through June 30, 2000. Borrowings by Fitchburg under the system money pool and its short-term borrowings from banks would not exceed $12 million at any one time outstanding.

At March 31, 1997, Unitil had three unsecured lines of credit totalling $18 million. Unitil proposes to issue short-term notes pursuant to these lines of credit and other formal and informal lines of credit with lending institutions through June 30, 2000.

Unitil's existing and proposed borrowing arrangements will provide for borrowings at ''base'' or ''prime'' rates publicly announced by a bank as the rate charged on loans to its most creditworthy business firms, and are subject to prepayment at Unitil's option. Borrowings may also be made at ''money market'' rates (market-based rates that are generally lower than base or prime rates, made available by banks on an offering or ''when available'' basis), which may or may not be subject to prepayment. Borrowings under the credit arrangements will mature not more than nine months from the date of issue.

Unitil requests authority to secure both formal and informal credit lines. Formal credit lines may be subject to compensating balances not in excess of 5% of the amount of the committed credit line, and/or fee requirements that will not exceed 50 basis points times the total line of credit. Unitil expects to use the proceeds from the requested borrowings for: (1) loans or advances to subsidiaries through the money pool; (2) payment of outstanding indebtedness; (3) short-term cash needs that may arise due to payment timing differences; and (4) other general corporate purposes.

Any of the proposed short-term borrowings by Fitchburg from commercial banks will be under terms and conditions similar to those of the borrowing arrangements between Unitil and its commercial bank lenders, described above. Fitchburg will use the proceeds from these borrowings to meet working capital requirements, provide interim financing for construction expenditures, and to meet debt and preferred stock sinking fund requirements.

The applicants participate in the Unitil system money pool, pursuant to a Pooling Agreement among Unitil and the Subsidiaries. Under the Pooling Agreement, Unitil and the Subsidiaries invest their surplus funds, and the Subsidiaries borrow funds, from the money pool. Unitil Service administers the money pool on an ''at cost'' basis. The purpose of the money pool is to provide the Subsidiaries with internal and external funds and to invest surplus funds of Unitil and the Subsidiaries in short-term money market instruments. The money pool provides the Subsidiaries with lower short-term borrowing costs due to elimination of banking fees; a mechanism to earn a higher return on interest from surplus funds that are loaned to other Subsidiaries; and decreased reliance on external funding sources. In connection with continued use of the money pool, Fitchburg seeks approval to incur borrowings from the other applicants, and the other applicants seek approval to make loans to Fitchburg.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–15660 Filed 6–10–97; 4:39 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38724; File No. SR–Amex–97–17]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the American Stock Exchange, Inc. Relating to Telemarketing Practices by Members and Member Organizations

June 6, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 19, 1997, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization.[2] On May 29, 1997, the Amex filed Amendment No. 2 to its proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has filed a proposal to add Rule 429 (''Telemarketing'') and amend Rule 428 (''Telephone Solicitation-Recordkeeping''), which are substantially similar to applicable provisions of the Federal Trade Commission rules adopted pursuant to the Telemarketing and Consumer Fraud and Abuse Prevention Act (''Telemarketing Act'').[4] The proposal also amends commentary .10 to Rule 481 (''Communications with the Public'') requiring telemarketing scripts to be retained for three years.[5]

The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement for the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of an basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to the Telephone Consumer Protection Act (''TCPA''),[6] the Amex adopted in January 1996 a ''cold call'' rule[7] that paralleled one of the rules of

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[1] 15 U.S.C. § 78s(b)(1).

[2] The Amex submitted the filing on April 2, 1997, however, the submission did not include the text of the proposed rule change, and, therefore, it did not comply with the requirements of Form 19b-4. In Amendment No. 1, the Amex submitted as Exhibit A the text of the proposed changes to Rules 428 and 429 and requested that the Commission approve the proposal on an accelerated basis pursuant to Section 19(b)(2) of the Act. Letter from Claudia Crowley, Special Counsel, Legal and Regulatory Policy, Amex, to George Villasana, Attorney, Division of Market Regulation, SEC, dated May 19, 1997.

[3] In Amendment No. 2, the Amex amended commentary .10 to Rule 481 to include telemarketing scripts within the definition of sales literature so that telemarketing scripts must be retained for three years. Letter from Claudia Crowley, Special Counsel, Legal and Regulatory Policy, Amex, to George Villasana, Attorney, Division of Market Regulation, SEC, dated May 29, 1997.

[4] 15 U.S.C. §§ 6101–08.

[5] According to the Exchange, it will issue an Information Circular advising the membership of the new telemarketing rules upon their approval, and clarifying that abusive, annoying or harassing telemarketing calls by members, member organizations or their associated persons are violative of Article V, Section 4(h) of the Amex Constitution and Amex Rule 345.

[6] 47 U.S.C. § 227.

[7] Under the ''cold call'' rule, each Amex member who engages in telephone solicitation to market its products and services is required to make and maintain a centralized do-not-call list of persons

the Federal Communications Commission (''FCC Rules'') [8] and requires persons who engage in telephone solicitations to sell products and services (''telemarketers'') to establish and maintain a list of persons who have requested that they not be contacted by the caller (''do-not-call list'').

Under the Telemarketing Act, which became law in August 1994,[9] the Federal Trade Commission adopted detailed regulations (''FTC Rules'') [10] to prohibit deceptive and abusive telemarketing acts and practices; the regulations became effective on December 31, 1995.[11] The FTC rules, among other things, (i) require the maintenance of ''do-not-call'' lists and procedures, (ii) prohibit certain abusive, annoying, or harassing telemarketing calls, (iii) prohibit telemarketing calls before 8 a.m. or after 9 p.m., (vi) require a telemarketer to identify himself or herself, the company he or she works for, and the purpose of the call, and (v) require express written authorization or other verifiable authorization from the customer before the firm may use negotiable instruments called ''demand drafts.'' [12]

Under the Telemarketing Act, the SEC is required either to promulgate or to require the SROs to promulgate rules substantially similar to the FTC Rules, unless the SEC determines either that the rules are not necessary or appropriate for the protection of investors or the maintenance of orderly markets, or that existing federal securities laws or SEC rules already provide for such protection.[13] The purpose of the proposed rule change is to add Amex Rule 429 and amend Amex Rule 428 and the Amex commentary .10 to Rule 481 in response to the Commission's request that major self-regulatory organizations (''SROs'') promulgate rules substantially similar to applicable provisions of the Federal Trade Commission rules adopted pursuant to the Telemarketing Act.

Time Limitations and Disclosure

The proposed rule change amends Rule 429 to prohibit, under proposed paragraph (a) to Rule 429, a member, member organization, or employee of a member or member organization from making outbound telephone calls to a member of the public's residence for the purpose of soliciting the purchase of securities or related services at any time other than between 8 a.m. and 9 p.m. local time at the called person's location and to require, under proposed paragraph (b) to Rule 429, such member, member organization or employee of a member or member organization to promptly disclose to the called person in a clear and conspicuous manner the caller's identify and firm, the telephone number or address at which the caller may be contacted, and that the purpose of the call is to solicit the purchase of securities or related services.

Proposed paragraph (c) to Rule 429 creates exemptions from the time-of-day and disclosure requirements of paragraphs (a) and (b) for telephone calls by any persons associated with a member or member organization, or other associated persons acting at the direction of such persons for the purposes of maintaining and servicing existing customers assigned to or under the control of the associated persons, to certain categories of ''existing customers.'' Paragraph (d) defines ''existing customer'' as a customer for whom the broker or dealer, or clearing broker or dealer on behalf of the broker or dealer, carries an account. Proposed subparagraph (c)(1) exempts calls, by an associated person, to an existing customer who, within the preceding twelve months, has effected a securities transaction in, or made a deposit of funds or securities into, an account under the control of or assigned to the associated person at the time of the transaction or deposit. Proposed subparagraph (c)(2) exempts calls, by an associated person, to an existing customer who, at any time, has effected a securities transaction in, or made a deposit of funds or securities into an account under the control of or assigned to the associated person at the time of the transaction or deposit, as long as the customer's account has earned interest or dividend income during the preceding twelve months. Each of these exemptions also permits calls by other associated persons acting at the direction of an associated person who is assigned to or controlling the account. Proposed paragraph (c)(3) exempts telephone calls to a broker or dealer. The proposed rule change also expressly clarifies that the scope of this rule is limited to the telemarketing calls described herein; the terms of the Rule do not otherwise expressly or by implication impose on members any additional requirements with respect to the relationship between a member and a customer or between a person associated with a member and a customer.

Demand Draft Authorization and Recordkeeping

Proposed paragraphs (b) and (c) to Rule 428 prohibit members, member

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who do not wish to receive telephone solicitations from such member or its associated persons. Securities Exchange Act Release No. 36748 (Jan. 19, 1996), 61 FR 2556 (approving File No. SR–AMEX–96–01).

The NYSE, NASD, the MSRB, the CBOE, and the PSE also adopted similar rules. *See* Securities Exchange Act Release Nos. 35821 (June 7, 1995), 60 FR 31337 (approving File No. SR–NYSE–95–11); 35831 (June 9, 1995), 60 FR 31527 (approving File No. SR–NASD–96–28); 38053 (Dec. 16, 1996), 61 FR 68078 (approving File No. SR–MSRB–96–06); 36588 (Dec. 13, 1995), 60 FR 56624 (approving File No. SR–CBOE–95–63); and 37897 (Oct. 30, 1996), 61 FR 57937 (approving File No. SR–PSE–96–32).

[8] Pursuant to the TCPA, the FCC adopted rules in December 1992 that, among other things, (1) prohibit cold-calls to residential telephone customers before 8 a.m. or after 9 p.m. (local time at the called party's location) and (2) require persons or entities engaging in cold-calling to institute procedures for maintaining a ''do-not-call'' list that included, at a minimum, (a) a written policy for maintaining the do-not-call list, (b) training personnel in the existence and use thereof, (c) recording a consumer's name and telephone number on the do-not-call list at the time the request not to receive calls is made, and retaining such information on the do-not-call list for a period of at least ten years, and (d) requiring telephone solicitors to provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made and a telephone number or address at which such person or entity may be contacted. 57 FR 48333 (codified at 47 CFR 64.1200). With certain limited exceptions, the FCC Rules apply to all residential telephone solicitations, including those relating to securities transactions. *Id.* While the FCC Rules are applicable to brokers that engage in telephone solicitation to market their products and services, those regulations cannot be enforced by either the SEC or the securities self-regulatory organizations (''SROs'').

[9] Telemarketing, *supra* note 4.

[10] 16 CFR 310.

[11] §§ 310.3–4 of FTC Rules.

[12] *Id.* Pursuant to the Telemarketing Act, the FTC Rules do not apply to brokers, dealers, and other securities industry professionals. Section 3(d)(2)(A) of the Telemarketing Act.

A ''demand draft'' is used to obtain funds from a customer's bank account without that person's signature on a negotiable instrument. The customer provides a potential payee with bank account identification information that permits the payee to create a piece of paper that will be processed like a check, including the words ''signature on file'' or ''signature preapproved'' in the location where the customer's signature normally appears.

[13] In response, the NASD and MSRB have adopted rules to curb abusive telemarketing practices. *See* Securities Exchange Act Release Nos. 38009 (Dec. 2, 1996), 61 FR 65625 (Dec. 13, 1996) (order approving File No. SR–NASD–96–28) and 38053 (Dec. 16, 1996) 61 FR 68078 (Dec. 26, 1996) (order approving File No. SR–MSRB–96–06).

The Commission has determined that the NASD Rule and MSRB Rule, together with the Exchange Act and the Investment Advisers Act of 1940, the rules thereunder, and the other rules of the SROs, satisfy the requirements of the Telemarketing Act, because the applicable provisions of such laws and rules are substantially similar to the FTC Rules except for those FTC Rules that involve areas already extensively regulated by existing securities laws or regulations or activities inapplicable to securities transactions. Securities Exchange Act Release No. 38480 (Apr. 7, 1997), 62 FR 18666 (Apr. 16, 1996). Accordingly, the Commission has determined that no additional rulemaking is required by it under the Telemarketing Act. *Id.* Notwithstanding this determination, the Commission still expects the remaining SROs to file similar proposals.

organizations or persons associated with a member or member organization from obtaining from a customer or submitting for payment a check, draft, or other form of negotiable paper drawn on a customer's checking, savings, share, or similar account (''demand draft'') without that person's express written authorization, which may include the customer's signature on the instrument, and to require the retention of such authorization for a period of three years. The proposal also states that this provision shall not, however, require maintenance of copies of negotiable instruments signed by customers.

Telemarketing Scripts

The proposed rule change also amends the definition of ''sales literature'' contained in the commentary to Rule 481 to include ''telemarketing scripts'' within that definition. This will require telemarketing scripts to be retained for a period of three years.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received without respect to the proposed rule change.[14]

III. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act[15] which requires, among other things, that the rules of the exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[16] The proposed rule change is consistent with these objectives in that it imposes time restriction and disclosure requirements, with certain exceptions, on members' telemarketing calls, requires verifiable authorization from a customer for demand drafts, and prevents members from engaging in certain deceptive and abusive telemarketing acts and practices while allowing for legitimate telemarketing activities.

The Commission believes that the amendments to Rule 429, prohibiting a member or person associated with a member from making outbound telephone calls to the residence of any person for the purpose of soliciting the purchase of securities or related services at any time other than between 8 a.m. and 9 p.m. local time at the called person's location, without the prior consent of the person, is appropriate. The Commission notes that, by restricting the times during which a member or person associated with a member may call a residence, the proposal furthers the interest of the public and provides for the protection of investors by preventing members and member organizations from engaging in unacceptable practices, such as persistently calling members of the public at unreasonable hours of the day and night.

The Commission also believes that the addition of Rule 429, requiring a member or person associated with a member to promptly disclose to the called person in a clear and conspicuous manner the caller's identity and firm, telephone number or address at which the caller may be contacted, and that the purpose of the call is to solicit the purchase of securities or related services, is appropriate. By requiring the caller to identify himself or herself and the purpose of the call, the Rule assists in the prevention of fraudulent and manipulative acts and practices by providing investors with information necessary to make an informed decision when purchasing securities. Moreover, by requiring the associated person to identify the firm for which he or she works and the telephone number or address at which the caller may be contacted, the Rule encourages responsible use of the telephone to market securities.

The Commission also believes that Rule 429, creating exemptions from the time-of-day and disclosure requirements for telephone calls by associated persons, or other associated persons acting at the direction of such persons, to certain categories of ''existing customers'' is appropriate. The Commission believes it is appropriate to create an exemption for calls to customers with whom there are existing relationships in order to accommodate personal and timely contact with a broker who can be presumed to know when it is convenient for a customer to respond to telephone calls. Moreover, such an exemption also may be necessary to accommodate trading with customers in multiple time zones across the United States. The Commission, however, believes that the exemption from the time-of-day and disclosure requirements should be limited to calls to persons with whom the broker has a minimally active relationship. In this regard, the Commission believes that Rule 429 achieves an appropriate balance between providing protection for the public and the members' interest in competing for customers.

The Commission also believes that the amendment to Rule 428, requiring that a member or person associated with a member obtain from a customer, and maintain for three years, express written authorization when submitting for payment a check, draft, or other form of negotiable paper drawn on a customer's checking, savings, share or similar account, is appropriate. The Commission notes that requiring a member or person associated with a member to obtain express written authorization from a customer in the above-mentioned circumstances assists in the prevention of fraudulent and manipulative acts in that it reduces the opportunity for a member or person associated with a member to misappropriate customers' funds. Moreover, the Commission believes that by requiring a member or person associated with a member to retain the authorization for three years, Rule 428 protects investors and the public interest in that it provides interested parties with the ability to acquire information necessary to ensure that valid authorization was obtained for the transfer of a customer's funds for the purchase of a security.

[14] The Commission, however, received, two comment letters on an NASD proposal, which is substantially similar. *See* Letter from Brad N. Bernstein, Assistant Vice President & Senior Attorney, Merrill Lynch, to Jonathan G. Katz, Secretary, SEC, dated Aug. 19, 1996 (''Merrill Lynch Letter from Frances M. Stadler, Associate Counsel, Investment Company Institute (''ICI''), to Jonathan G. Katz, Secretary, SEC, dated Aug. 21, 1996 (''ICI Letter'').

For a discussion of the letters and responses thereto, see Securities Exchange Act Release No. 38009 (Dec. 2, 1996) (approving File No. SR–NASD–96–28).

[15] 15 U.S.C. § 78f(b)(5).

[16] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. § 78c(f).

The Commission also believes that the amendment to commentary .10 to Rule 481, requiring the retention of telemarketing scripts for a period of three years is appropriate. By requiring the retention of telemarketing scripts for three years, the commentary to Rule 481 assists in the prevention of fraudulent and manipulative acts and practices and provides for the protection of the public in that interested parties will have the ability to acquire copies of the scripts used to solicit the purchase of securities to ensure that members and associated persons are not engaged in unacceptable telemarketing practices.

Finally, the Commission believes that the proposed rule achieves a reasonable balance between the Commission's interest in preventing members from engaging in deceptive and abusive telemarketing acts and the members' interest in conducting legitimate telemarketing practices.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The proposal is identical to the NASD and MSRB rules, which were published for comment and, subsequently, approved by the Commission. The approval of the Amex's rules and commentary provides a consistent standard across the industry. In that regard, the Commission believes that granting accelerated approval of the proposal rule change is appropriate and consistent with Section 6 of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–97–17 and should be submitted by July 7, 1997.

V. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, [17] that the proposed rule change (SR–Amex–97–17) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

[FR Doc. 97–15464 Filed 6–12–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38723; File No. SR–CBOE–97–24]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Chicago Board Options Exchange, Incorporated Relating to a Reduction of the Quorum Requirements in Uncontested Elections

June 6, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 21, 1997, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On June 4, 1997, the CBOE submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its Constitution to reduce the quorum required in uncontested elections from a majority to one-third (1⁄3) of the members entitled to vote. The Exchange is also making a change to clarify Section 3.7 of the Constitution. The text of the proposed amendment to the Constitution is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to reduce the quorum requirement in uncontested elections by revising Section 3.6 of the Exchange's Constitution, thereby increasing the efficiency of Exchange elections when an election is uncontested. The Exchange also proposes to revise Section 3.7 of the Constitution to make it clear that this Section governs voting by members on issues other than elections. The quorum requirement will remain a majority of the members entitled to vote on issues arising pursuant to Section 3.7.

The Exchange conducts an annual election and special meetings of its membership.[4] Currently, at all meetings of Exchange members, including elections, a majority of the membership entitled to vote constitutes a quorum. The Exchange is proposing to reduce the quorum requirement, in uncontested elections only, from a majority to one-third of the members entitled to vote.[5] Uncontested elections are elections in which each candidate is running for office unopposed. If any candidate for office is opposed, the entire election

[17] 15 U.S.C. § 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Debora E. Barnes, Senior Attorney, CBOE, to Debra Flynn, Attorney, SEC (June 3, 1997). In Amendment No. 1, the CBOE replaced all references to ''Constitution'' change with ''Rule'' change, clarified the definition of ''uncontested elections'' by deleting the phrase ''for example,'' and clarified the language in Sections 3.6 and 3.7 of the Constitution.

[4] At annual election meetings, the CBOE membership votes for a slate of candidates proposed by the Nominating Committee for expiring terms and vacancies on the Board of Directors and certain other Exchange Committees, such as the Nominating and Modified Trading System Committees.

[5] In connection with the proposed amendment to the Constitution, the Election Committee stated that its policy under the reduced quorum proposal, if approved, would be to collect ballots and proxies in-person for three trading sessions prior to any meeting at which a vote would be conducted. Any change to this Election Committee policy would need to be approved by the Board of Directors and submitted to the Commission pursuant to Rule 19b–4.

would be considered contested, and would require a majority for a quorum.

The Exchange notes that, in certain uncontested elections, it has taken a considerable amount of time to obtain a quorum under the current majority requirement. As a result, significant Exchange staff time and resources were expended in order to obtain a quorum. The Exchange believes that the proposed rule change, as amended, will maximize the use of Exchange resources and provide an incentive for members to vote earlier.

2. Statutory Basis

The Exchange believes that reducing the quorum required in uncontested elections to one-third of the members entitled to vote will improve the efficiency of the CBOE election process as well as the allocation of CBOE resources. As such, the Exchange believes that the Constitution proposal is consistent with and furthers the objectives of Section 6(b)(5) of the Act[6] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change, as amended, will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The CBOE membership voted on the quorum reduction at the Annual Election Meeting held on December 11, 1996. The proposed rule change was approved by the CBOE membership by a vote of 637 for, 73 against and 15 abstained.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and coping at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–97–24 and should be submitted by July 7, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–15465 Filed 6–12–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38725; File No. SR–CBOE–97–21]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Membership Application Submission Deadlines

June 6, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 15, 1997, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend CBOE Rule 3.9 to give the Exchange's Membership Committee the authority to establish deadlines for the submission of each type of membership application, which in no event will exceed 90 days prior to the date that the application will be considered for approval.

The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

CBOE Rule 3.9(a) currently requires every individual or organization applying to become an Exchange member and every individual applying to become a nominee of an Exchange member organization to file an application with the Exchange's Membership Department no later than the first business day of the month during which the application will be considered by the Exchange's Membership Committee. The Membership Committee generally meets once a month. The Membership Committee's present practice is to hold this meeting on the Thursday of the third week of the month. Depending on the particular month, the current membership application submission deadline can provide the Exchange with as few as 10 business days to process a membership application prior to the Membership Committee's consideration of the application at its monthly meeting.

The Exchange has found that the current application submission deadline makes it extremely difficult for the Exchange to complete the processing of certain types of membership

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[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. § 78s(b)(1) (1988).

applications in time for consideration by the Membership Committee at its monthly meeting. For example, the processing of membership applications submitted by new membership applicants involves a number of time-consuming components. Among other things, such an application cannot be acted upon until: (1) the Membership Department receives from an outside investigative service an investigate report concerning the applicant; (2) the applicant's name has been posted on the Exchange's Bulletin Board for 14 calendar days; (3) the Membership Department has reviewed the application materials and the contents of the investigate report; (4) a File Review Subcommittee of the Membership Committee has reviewed the application materials and the investigative report; and (5) the Membership Department has received from the applicant any clarifications or additional information requested from the applicant concerning the application materials or investigative report. Similarly, it is also time-consuming for the Exchange to process applications of member organizations requesting approval from the Membership Committee to transact business with the public pursuant to CBOE Rule 9.1 or to act as an order service firm pursuant to CBOE Rule 6.77.

On the other hand, the Exchange is typically able to process other types of membership applications more quickly. For example, the application of an existing member to change his or her membership status is less involved and does not involve an investigation by an outside investigative service. The same is true of an application of a former individual member who is reapplying for membership within 6 months after his or her membership termination date.

The purpose of the proposed rule change is to eliminate the current general membership application submission deadline, and instead, to provide in Rule 3.9(a) that the Membership Committee shall establish separate submission deadlines for each type of membership application. This will permit the Membership Committee to tailor a particular submission deadline to the type of membership application involved and to periodically shorten or lengthen the deadline, if appropriate, to correlate it with the amount of time that the Exchange is generally taking to process that type of application. The Membership Committee will disseminate these submission deadlines to the Exchange's membership in a regulatory circular that will be published in the Exchange's Regulatory Bulletin and will include the circular in the membership information packets that the Membership Department provides to prospective membership applicants. However, in no event will the Membership Committee be permitted to establish a submission deadline for any type of membership application which is in excess of 90 days prior to the date that such an application will be considered for approval. Additionally, the Membership Committee will not alter any membership application submission deadline without first giving at least 60 days prior notice in the form of a regulatory circular that a new deadline will be going into effect.

Once the Membership Committee has established the submission deadline for a particular type of membership application, each such membership application will be required to be submitted to the Membership Department in accordance with the deadline in order to be eligible to be considered for approval.

Finally, it should be noted that this rule change is not intended to limit the Membership Committee's ability to table its consideration of a membership application in accordance with Rule 3.9(c)(1) or Rule 3.9(e) in order to obtain additional information concerning an applicant or pursuant to CBOE Rule 3.4(d) when an applicant is subject to an investigation being conducted by a self-regulatory organization or government agency involving the applicant's fitness for membership.

The proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Sections 6(b)(5) and 6(b)(7) in particular, in that it is designed to protect investors and the public interest and to provide a fair procedure for the consideration of Exchange membership applications by ensuring that the Exchange has adequate time in which to review membership applications.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the CBOE consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–97–21 and should be submitted by July 7, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Jonathan G. Katz,

Secretary.

[FR Doc. 97–15466 Filed 6–12–97; 8:45 am]

BILLING CODE 8010–01–M

[2] 17 CFR 200.30–3(a)(12)(1991).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38722; File No. SR–CHX–97–10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Payment of Dues

June 6, 1997.

On May 29, 1997,[1] the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission or ''SEC'') the proposed rule change (SR–CHX–97–10), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder. The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as constituting a state policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange under Section 19(b)(3)(A)(i) of the Act, which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Article XIV, Rule 1 of the its Rules, relating to payment of dues (hereafter referred to as ''the proposed rule change'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As currently written, Article XIV, Rule 1 of the Exchange's Rule states that dues are payable quarterly. In practice, dues are billed and paid according to the Exchange fee schedule, which states that dues are payable monthly in equal installments. The proposed rule change would bring the text of Rule 1 into line with Exchange practice.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(5)[3] of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange and therefore has become effective upon receipt by the Commission, pursuant to Section 19(b)(3)(A)(i) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within sixty days of the filing of a proposed rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–97–10 and should be submitted by July 7, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–15467 Filed 6–12–97; 8:45 am]

BILLING CODE 8010–01–M

[1] On June 6, 1997, the Exchange submitted Amendment No. 1 to SR–CHX–97–10. *See* letter from David T. Rusoff, Esq., Foley & Lardner, to Ms. Katherine A. England, Division of Market Regulation, SEC, dated June 6, 1997.

[2] 15 U.S.C. 78s(b)(1).

[3] Section 6(b)(5) requires the Commission to determine that a registered national securities exchange's rule is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

[4] 17 CFR 200.30–3(a)(12).

U.S. SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #2952]

State of Florida

Duval County and the contiguous Counties of Baker, Clay, Nassau, and St. Johns in the State of Florida constitute a disaster area as a result of damages caused by severe storms and high winds which occurred on May 27, 1997. Applications for loans for physical damage may be filed until the close of business on August 4, 1997, and for economic injury until the close of business on March 4, 1998 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000

	Percent
Homeowners without credit available elsewhere	4.000
Businesses with credit available elswhere	8.000
Businesses and non-profit organizations without credit available elswwhere	4.000
Others (Including non-profit organizations) with credit available elswhere	7.250
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 295211 and for economic injury the number is 951300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: June 4, 1997.

Aida Alvarez,

Administrator.

[FR Doc. 97–15447 Filed 6–12–97; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice No. 2557]

United States International Telecommunications Advisory Committee, WRC–97 AD HOC; Meeting Notice

The Department of State announces that an Ad-Hoc Working Group for the ITU World Radiocommunication Conference of the United States ITU–R National Committee is holding a meeting to prepare for the ITU World Radiocommunication Conference to be held October 27–November 21, 1997 in Geneva. The meeting will be held on June 27, 1997 at 1:00 p.m. in room 1912 at the Department of State, 2201 C Street N.W., Washington, DC 20520

The agenda of the meeting will include discussion of issues pertaining to the World Radiocommunication Conference, preparation for bilateral discussions on conference issues, administrative matters related to U.S. participation in the conference, and nay other matters that may arise regarding preparations for the Radiocommunication Conference.

Members of the General Public may attend the meetings and join in the discussions, subject to the instructions of the chair. Admittance of public members will be limited to the seating available. In this regard, entrance to the Department of State is controlled. If you wish to attend please fax your name, Social Security number and Date of Birth to 202–647–0158 not later than 5 days before the meeting. Enter from the C Street Lobby. A picture ID will be required for admittance.

Dated: June 9, 1997.

Warren G. Richards,

Chairman, ITU–R National Committee.

[FR Doc. 97–15518 Filed 6–12–97; 8:45 am]

BILLING CODE 4710–45–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Identification of Priority Foreign Country Practices; Request from Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Request for written submissions from the public.

SUMMARY: Executive Order 12901 of March 3, 1994, as amended by Executive Order 12973 of September 27, 1995 (as did the ''Super 301'' procedures in the Omnibus Trade and Competitiveness Act of 1988), requires the United States Trade Representative (USTR) to review United States trade expansion priorities and to identify priority foreign country practices, the elimination of which is likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent. USTR is requesting written submissions from the public concerning foreign country practices that should be considered by the USTR for this purpose.

DATES: Submissions must be received on or before 12:00 noon on Thursday, July 10, 1997.

ADDRESSES: 600 17th Street, NW, Washington, D.C. 20508.

FOR FURTHER INFORMATION CONTACT: Questions concerning the filing of submissions should be directed to Sybia Harrison, Staff Assistant to Section 301 Committee, (202) 395–3432; legal questions regarding the executive order and its implementation should be addressed to Irving Williamson, Deputy General Counsel, Office of the United States Trade Representative, (202) 395–2432.

SUPPLEMENTARY INFORMATION: By Executive Order 12901 of March 3, 1994 (59 FR 10727), the President ordered USTR to identify trade expansion priorities for calendar years 1994 and 1995, given that the identification provisions of section 310 of the Trade Act of 1974 (commonly referred to as ''Super 301'') were then no longer in effect. By Executive Order 12973 of September 17, 1995, the President extended this identification process to calendar years 1996 and 1997 (60 FR 51665). Section 1 of E.O. 12901, as amended by E.O. 12973, requires the USTR, no later than September 30, 1996, and September 30, 1997, to review United States trade expansion priorities and identify priority foreign country practices, the elimination of which is likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent. A report on the practices identified must be submitted to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, and published in the Federal Register. Section 2 of E.O. 12091 requires the Trade Representative to initiate investigations under section 302(b)(1) of the Trade Act of 1974 (19 U.S.C. 2412(b)(1), no later than 21 days after submission of the report, with respect to all of the priority foreign country practices so identified. The USTR may also cite in the report practices that may warrant identification in the future or that were not identified because they are already being addressed and progress is being made toward their elimination.

Requirements for Submissions

The USTR invites submissions on foreign country practices that should be considered for identification under E.O. 12901. Submissions should indicate whether the foreign policy or practice at issue was identified in the 1997 National Trade Estimate Report on Foreign Trade Barriers (NTE Report) published by the Office of the USTR on March 31, 1997 (U.S. Government Printing Office, ISBN 0–16–049024–3), and if so, should cite the page number(s) where it appears in the NTE and provide any additional information considered relevant. (A copy of the NTE Report is maintained in the USTR Reading Room and also can be located at USTR's Internet Home Page address, which is: http://www.ustr.gov.) If the foreign practice was not identified in the NTE Report, submissions should (1) include information on the nature and significance of the foreign practice; (2) identify the United States product, service, intellectual property right, or foreign direct investment matter which is affected by the foreign practice; and (3) provide any other information considered relevant. Such information may include information on the trade agreements to which a foreign country is a party, and its compliance with those agreements; the medium- and long-term implications of foreign government procurement plans; and the international competitive position and export potential of United States products and services. Because submissions will be placed in a public file, open to public inspection at USTR, business-confidential information should not be submitted.

Interested persons must provide twenty copies of any submission to Sybia Harrison, staff assistant to the Section 301 Committee, Room 222, 600 17th Street, NW, Washington, D.C. 20508, no later than 12:00 noon on Thursday, July 10, 1997.

Public Inspection of Submissions

Submissions will be placed in a public file, open for inspection at the USTR Reading Room, in Room 101, Office of the United States Trade Representative, 600 17th Street, NW, Washington, D.C. An appointment to review the file may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12:00 noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 97–15623 Filed 6–12–97; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–111]

Section 302 Investigation: Certain Subsidies Affecting Access to the European Communities' Market for Modified Starch

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The United States Trade Representative (USTR), following consultations with the petitioners, intends to consult with the European Communities (EC) regarding wheat gluten exports from the EC to the United States. These consultations will be conducted pursuant to a bilateral agreement with the EC on grains signed on July 22, 1996 (Grains Agreement). Pending the outcome of these consultations, the USTR will not pursue consultations under the World Trade Organization (WTO) agreements and has terminated the investigation initiated on March 8, 1997, under section 302(a) of the Trade Act of 1974.

DATES: This investigation was terminated on June 6, 1997.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW, Washington, D.C. 20508.

FOR FURTHER INFORMATION CONTACT: Ronald K. Lorentzen, Office of WTO and Multilateral Affairs, (202) 395–3063; William D. Hunter, Office of the General Counsel, (202) 395–9418; or Robert Cummings, Office of Agricultural Affairs, (202) 395–6127.

SUPPLEMENTARY INFORMATION: On January 22, 1997, the U.S. Wheat Gluten Industry Council filed a petition pursuant to section 302(a) of the Trade Act of 1974 (Trade Act) (19 U.S.C. 2412(a)) alleging that certain subsidy schemes of the EC constitute acts, policies and practices that violate, or are inconsistent with and otherwise deny benefits to the United States under, the General Agreement on Tariffs and Trade 1994 and the Agreement on Subsidies and Countervailing Measures. On March 8, 1997, the Acting USTR initiated an investigation under section 302 with respect to the EC starch production refund program to determine whether subsidies granted under that program are causing or threatening to cause serious prejudice to U.S. interests with respect to U.S. exports of modified starch to the EC, or are nullifying or impairing benefits accruing to the United States under the WTO agreements. (62 F.R. 12264). The Acting USTR also requested public comment on the matter under investigation. Pursuant to section 303(b)(1)(A) of the Trade Act, the Acting USTR decided to delay requesting consultations with the EC regarding the EC starch production refund program for up to 90 days for the purpose of verifying and improving the petition to ensure an adequate basis for consultations with the EC.

Investigation and Consultations

Having reviewed the information obtained during the investigation, including written comments provided by interested persons, the USTR continues to have serious concerns about the effects on U.S. wheat gluten and wheat starch producers of EC policies that insulate European wheat starch and gluten producers from world competition and that subsidize European production and exports. Therefore, having consulted with the petitioner, the USTR has determined to consult with the EC under provisions of the Grains Agreement, and that, at this time, consultations will not be pursued under the WTO agreements. This decision will be reexamined at a later date, pending the outcome of consultations under the Grains Agreement. In light of the foregoing, the USTR is terminating the investigation under section 302.

USTR will continue to work with the petitioner in developing information and analysis that may form the basis for further action, including possible action under section 301. In this regard, USTR, in response to a request by the petitioner, has initiated the information gathering procedures of section 308 of the Trade Act, and that process remains ongoing.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 97–15624 Filed 6–12–97; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Task Force on Assistance to Families in Aviation Disasters; Open Meeting

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of meeting.

SUMMARY: The Task Force on Assistance to Families in Aviation Disasters will hold a meeting to discuss assistance to families of passengers involved in aviation accidents. The meeting is open to the public.

DATES: The meeting will be held on Wednesday, July 9, and Thursday, July 10, 1997, from 9:30 am to 4:30 pm each day.

ADDRESSES: The meeting will take place in Room 2230 of Department of Transportation (DOT) Headquarters, 400 7th Street, SW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Steven R. Okun, Task Force Executive Director, telephone 202–366–4702, or Marc C. Owen, Task Force Staff Director, mailing address, 400 7th Street SW, Room 5424, Washington, D.C. 20590, telecopier 202–366–7147, and telephone 202–366–6823.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. Appendix), DOT gives notice of a meeting of the Task Force on Assistance to Families in Aviation Disasters (Task Force). The Task Force was established by the Aviation Disaster Family Assistance Act of 1996 to develop recommendations on ways to improve the treatment of families of passengers involved in aviation accidents. One purpose of the meeting on July 9 is to take public testimony on issues within the Charter of the Task Force. Members of the public wishing to testify should submit their request to appear before the Task Force and a copy of their comments to Marc Owen by July 1, 1997. Oral testimony must be no more than ten minutes. Issues relating to the media's involvement with aviation disasters is also scheduled to be addressed that day.

The opportunity to testify is limited and is available on a first-come, first-serve basis. Seating for the meeting is also available on a first-come, first-serve basis. The public may submit written comments to the Task Force at any time. Comments should be sent to Mr. Owen at the address or telecopier number shown above.

The meeting on July 10, 1997, is also open to the public. Topics for discussion at that meeting include the issue of the proper notification to family members by the airlines that an individual was on-board an aircraft involved in an aviation disaster.

Issued in Washington, D.C., on June 10, 1997.

Steven R. Okun,

Task Force Executive Director, Department of Transportation.

[FR Doc. 97–15553 Filed 6–12–97; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 97–033]

Commercial Fishing Industry Vessel Advisory Committee (CFIVAC); Vacancies

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The Coast Guard is seeking applications for appointment to membership on the Commercial Fishing Industry Vessel Advisory Committee (CFIVAC). The CFIVAC provides advice and makes recommendations to the Coat Guard on commercial fishing industry vessel operations.

DATES: Completed applications and supporting documentation should be submitted to the U.S. Coast Guard before October 1, 1997.

ADDRESSES: Persons interested in applying for membership on the CFIVAC may obtain an application form by writing to Commandant (G–MSO–2), U.S. Coast Guard, Room 1210, 2100 Second Street SW., Washington, DC 20593–0001, or contacting the following persons in the following paragraph.

FOR FURTHER INFORMATION CONTACT: Commander Mark D. Bobal, Executive Director of CFIVAC, or, LTJG Marcus Hugi, mhugi@comdt.uscg.mil, Assistant to the Executive Director, telephone (202) 267–1181, fax (202) 267–4570.

SUPPLEMENTARY INFORMATION: The Commercial Fishing Industry Vessel Advisory Committee (CFIVAC) is a Federal advisory committee that operates in accord with the Federal Advisory Committee Act, 5 U.S.C. App. 2. As required by the Commercial Fishing Industry Vessel Safety Act of 1988, the Coast Guard established the CFIVAC to provide advice to the Coast Guard on issues related to the safety of commercial fishing vessels regulated under chapter 45 of Title 46, United States Code, which includes uninspected fishing vessels, fish processing vessels, and fish tender vessels. The CFIVAC consists of 17 members as follows: Ten members from the commercial fishing industry who reflect a regional and representational balance and have experience in the operation of vessels to which chapter 45 of Title 46, United States code applies, or as a crew member of processing line member on an uninspected fish processing vessel; one member representing naval architects or marine surveyors; one member representing manufacturers of equipment for vessels to which chapter 45 applies; one member representing education or training professionals related to fishing vessel, fish processing vessel, or fish tender vessel safety, or personnel qualifications; one member representing underwriters that insure vessels to which chapter 45 applies; and three members representing the general public, including whenever possible, an independent expert or consultant in maritime safety and a member of a national organization composed of persons representing owners of vessels to which chapter 45 applies and persons representing the marine insurance industry.

The CFIVAC meets at least once a year in different seaport cities nationwide. Special meetings may also be called. Subcommittee meetings are held to consider specific problems as required.

Applications will be considered for six positions that expire or become vacant in October 1997 in the following categories: (a) Commercial Fishing Industry (three positions); (b) General Public (one position); (c) Training and Education (one position); (d) Insurance Underwriters (one position). Persons selected as general public members are required to complete a Confidential Financial Disclosure Report, SF450, on a annual basis.

Each member serves for a term of three years. A limited portion of the membership may serve consecutive terms. Members of the CFIVAC serve without compensation from the Federal Government, although travel reimbursements and per diem are provided.

In support of the U.S. Department of Transportation's policy on ethnic and gender diversity, the Coast Guard is especially seeking applications from qualified women and minority group members.

Dated: June 9, 1997.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 97–15537 Filed 6–12–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 97–032]

Chemical Transportation Advisory Committee; Subcommittee on the Review/Update of Vapor Control System Regulations Meetings

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Vapor Control System (VCS) Regulations Review/Update Subcommittee of the Chemical Transportation Advisory Committee (CTAC) will meet to continue work on developing a recommended revision of the marine vapor control regulations found in Title 33, Code of Federal Regulations, part 154 and Title 46, Code of Federal Regulations, part 39. The meetings are open to the public.

DATES: The meetings of the VCS Subcommittee will be held on June 17, 1997, from 9 a.m. to 4 p.m. and June 18, 1997, from 8 a.m. to 3 p.m. Written material and requests to make oral presentations should reach the Coast Guard on or before June 12, 1997.

ADDRESSES: The meetings of the VCS Subcommittee will be held in the training academy conference room, ABS Plaza, 16855 Northchase Drive, Houston, TX 77060. For directions to the meetings, please contact Lieutenant J. J. Plunkett, Commandant (G–MSO–3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. J. Plunkett, Commandant (G–MSO–3), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001; telephone (202) 267–0087, fax (202) 267–4570 or Mr. Paul J. Book, American Commercial Barge Line Company; telephone (812) 288–0220, fax (812) 288–0478.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meetings

The agenda includes the following:

(1) Presentation of each subcommittee member's work thus far and plans for the future.

(2) Review and discussion of the work completed by each member.

(3) Discussion of joint facility/vessel opportunities for improvements to the VCS program. After meeting together, the subcommittee members will form into two work groups to discuss in detail their assigned tasks. The two groups are Facility VCS work group and Vessel VCS work group.

Procedural

These meetings are open to the public. At the Subcommittee Chairperson's discretion, members of the public may make oral presentations during the meetings. Persons wishing to make oral presentations at the meetings should notify Mr. Book no later than June 12, 1997. Written material for distribution at the meetings should reach the Coast Guard no later than June 12, 1997. If a person submitting material would like a copy distributed to each member of the subcommittee in advance of the meetings, that person should submit 25 copies to Mr. Book no later than June 12, 1997.

Information on Services for the Disabled

For information on facilities or services for the disabled or to request special assistance at the meetings, contact Lieutenant Plunkett as soon as possible.

Dated: June 9, 1997.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 97–15538 Filed 6–12–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration (FHWA)

Availability of Implementation Guidelines

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The FHWA has published implementation guidelines on how to set up an alcohol and drug testing program. This notice provides the public with the address and telephone number where these guidelines may be obtained. The FHWA urges motor carriers to obtain these guidelines to ensure they have set their programs to be in compliance with the FHWA's rules and guidance.

FOR FURTHER INFORMATION CONTACT: Order Desk, National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161; telephone (703) 487–4650, or Neill Thomas, Office of Motor Carrier Research and Standards, FHWA, (202) 366–1790.

SUPPLEMENTARY INFORMATION:

Implementation Guidelines

In response to passage of the Omnibus Transportation Employee Testing Act of 1991, the FHWA has published regulations prohibiting controlled substances use and alcohol misuse and modified other current regulations. The regulations at 49 CFR part 382, ''Controlled Substances and Alcohol Use and Testing,'' replaced 49 CFR part 391, subpart H, ''Controlled Substances Testing.'' In addition, the Department of Transportation (DOT) has issued 49 CFR part 40, ''Procedures for Transportation Workplace Drug and Alcohol Testing Programs,'' which prescribes testing methods to be followed.

The FHWA has developed the implementation guidelines to assist motor carriers in implementing the regulations. The ultimate goal of the regulations, for the FHWA and the motor carrier industry, is to achieve a controlled substances-and alcohol-free work force in the interest of the health and safety of employers, drivers, and the public.

These implementation guidelines are the FHWA's ''small entity compliance guide.'' The guidelines were called for by the Contract With America Advancement Act of 1996 (Pub. L. 104–121, Title III, Subtitle A, March 29, 1996). As allowed by this Act, the content of this small entity compliance guide may be considered, upon judicial review, as evidence in support of the reasonableness or appropriateness of any proposed fines, penalties, or damages of an FHWA civil or administrative action.

These guidelines are written as if a motor carrier has no controlled substances and/or alcohol testing program already in place. It provides a logical sequence for implementing the various elements of a successful program and contains examples of documents, checklists, forms, and procedures that may be used by individual motor carriers in formulating their programs. The required elements of a controlled substances use and alcohol misuse program discussed in the guidelines are: (1) Policy and procedure development; (2) Driver education and supervisor training; (3) Urine specimen collection and testing; (4) Breath and saliva sample collection and testing; and (5) Recordkeeping and reporting.

The guidelines may be purchased through the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161; telephone (703) 487–4650. The NTIS has assigned order No. *PB 96–197926* to the publication. Initial prices are: Hard copy—price code A16—*$49.00;* Microfiche—price code A03—*$19.50.*

Authority: 23 U.S.C. 315 and 49 CFR 1.48.

Issued on: June 4, 1997.

Jane Garvey,

Acting Administrator, Federal Highway Administration.

[FR Doc. 97–15542 Filed 6–12–97; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Virginia Beach, Virginia

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Cancellation of the notice of intent.

SUMMARY: This notice rescinds the previous Notice of Intent issued on August 6, 1992, to prepare an environmental impact statement on a proposal to construct Ferrell Parkway, a proposed multi-lane, controlled access, urban arterial, from near the intersection of General Booth Boulevard and Princess Anne Road to the intersection of Sandfiddler Road and Sandbridge Road.

FOR FURTHER INFORMATION CONTACT:

Mr. J. Bruce Turner, Transportation Planner, Federal Highway Administration, 1504 Santa Rosa Road, Suite 205, Richmond, Virginia 23229, Telephone (804) 281–5111.

SUPPLEMENTARY INFORMATION: The FHWA, in conjunction with the Virginia Department of Transportation and the City of Virginia Beach, has determined that this proposal will not be pursued at this time.

(Authority: 23 U.S.C. 315; 49 CFR 1.48.)

Issued on: June 3, 1997.

J. Bruce Turner,

Transportation Planner, Richmond, Virginia.

[FR Doc. 97–15494 Filed 6–12–97; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Weather Information for Surface Transportation; Request for Participation

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for participation.

SUMMARY: The U.S. Department of Transportation (USDOT) supports the continuing development of an Intelligent Transportation System (ITS) in rural areas, as defined in the Advanced Rural Transportation Systems (ARTS) program, and as contained in section 6051–6059 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) Public Law 102–240, 105 Stat. 1914 (1991), as amended. This Request for Participation (RFP) focuses on the development of a system that meets highway operators' and users' needs for clear and accurate weather and road condition information. Such a system will cut across all of the Critical Program Areas (CPA) of the ARTS Strategic Plan, since all operators and users have a need for this type of information. Proposals are solicited from public/private partnerships to design, develop and evaluate an integrated system that meets these needs, especially in a rural environment. Proposals will be assessed on their technical and financial merit, and the funding will be provided through one cooperative agreement between the Federal Highway Administration (FHWA) and a State DOT.

DATES: Proposals must be received by 4 p.m., e.t., on August 1, 1997.

ADDRESSES: Proposals should be submitted directly to Mr. Paul Pisano, Federal Highway Administration, HSR–30, 6300 Georgetown Pike, McLean, Virginia 22101–2296.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Pisano, FHWA, Office of Safety and Traffic Operations R&D, (703) 285–2498 at the address above; or Mr. Raymond Resendes, ITS Joint Program Office, (202) 366–2182; or Mr. Robert Robel, FHWA, Office of Acquisition Management, (202) 366–4227; or Ms. Beverly Russell, FHWA, Office of the Chief Counsel (202) 366–1355, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Copies of the ARTS Strategic Plan, which describes the program goals and the CPAs are available from ITS America, 400 Virginia Avenue, SW., Suite 800, Washington, D.C. 20024, telephone (202) 484–4847. Electronic copies are available on the ITS America Internet Home Page, http://www.itsa.org.

I. Introduction

Subpart B of title VI (secs. 6051–6059) of the ISTEA provides for the Intelligent Transportation Systems Act of 1991 which authorizes the Secretary of Transportation to establish a program to research, develop, and operationally test ''intelligent transportation systems'' (ITS)—that is, the development or application of electronics, communications, or information processing to improve the efficiency and safety of surface transportation systems. Surface transportation weather information is vital to highway operators and users for making decisions about snow and ice control, traffic management, hazardous driving condition warnings, travel planning, and other activities. Progress has been made in developing weather information systems for snow and ice control. This progress is to be extended to other applications, by augmenting the existing Road Weather Information System (RWIS) and incorporating weather information into the developing ITS architecture. The quality of weather information affects costs of road operation and travel, as well as travel safety and security. These effects are particularly important in rural environments, as indicated in previous rural transportation needs assessments.

A weather information system begins with observational data of atmospheric, surface and subsurface conditions. These data may be used directly for weather-related decisions in highway operating and travel activities, but generally the data are assimilated into fused and filtered datasets, that may serve as ''nowcasts'' or enter into forecasting models. The weather data, and related decisions, exist at particular scale ranges, referred to as micro-, meso-, synoptic, and climatic-scale. The synoptic scale (horizon of days, large area resolution) is generally what is available to the public now; however, critical decisionmaking for highway use and operation requires information improvements generally in the meso-scale (hour and sub-hour horizons, down to kilometers of resolution), as well as in existing conditions (e.g., nowcasts). Observed and predicted data are analyzed to produce weather condition indicators of interest to decision makers. Weather information, at whatever stage of processing, is packaged in forms suitable for end-user applications, and disseminated to them by various communications links.

The weather information of interest to highway operators and travelers includes both atmospheric and road surface condition information. Atmospheric conditions of visibility, wind and precipitation are relevant, and must be combined with road surface conditions—especially snow, ice and water coverage—to complete the weather information package. This package can then be formatted and disseminated for use by applications for: maintenance personnel, emergency medical service (EMS) operators, emergency management personnel (e.g., during evacuations), school bus operators, transit operators, commercial vehicle operators, traffic managers and travelers.

The existing components for producing and disseminating weather information can be combined with newly developed components to form an integrated weather information system. This system must make maximum use of existing and standardized data, forecasts and products. Collecting data and operating forecast models are expensive for specialized users, and most users depend on the forecasts and datasets of the National Weather Service (NWS) under the National Oceanic and Atmospheric Administration (NOAA). Weather-related decisionmaking can be improved by matching the nature of the decisions to local or specialized data collection, and to specialized analysis, packaging and dissemination of weather information from existing assimilated or forecast data.

The usefulness of weather information is maximized, and its cost minimized, by the sharing of information. This requires standards for data formats and products. The NWS is dominant in affecting standards for dissemination of observational data and forecasts. The National ITS Architecture, primarily via National Transportation Communications Interface Protocol (NTCIP) activities, is establishing standards for transportation weather information systems. An important issue is how improvements in integration of information systems will merge with and comply with these standards and existing systems such as the RWIS.

Much of the value added to existing weather information for specialized users will be by private service providers who analyze data and provide focused dissemination of products. The public sector highway operators will always play a major role in such an integrated system, whether as system maintainer or as end user. Consequently, it is clear that partnerships with the private sector in selected, value-added information processing and dissemination to highway operators and users could be a lost opportunity if not promoted and developed.

The rural highway system is characterized by a few, highly traveled routes, and many miles of low use, isolated routes. Both types of routes can traverse areas where weather extremes create dangerous travel situations, and where information or aid is now difficult to access. In 1995, there were 20,712 fatal accidents in rural areas, and nationally about 13 percent of such accidents occur in inclement weather. Better weather information to affect highway treatment, traffic operations, trip-making decisions and driver behavior can reduce the number of accidents. Rural highway operators have the bulk of the nation's highway mileage to operate. There is a need to operate these highways more efficiently and effectively under budget constraints. This can be aided by weather information that is more reliable for specific routes and locations. The challenges are not only in matching weather information to decisions, but in dealing with data collection and information transmission over the wide expanses and rugged terrain of rural areas.

II. Objectives

The objectives of this project are to develop an integrated weather information system that improves and broadens the scope of atmospheric and road surface condition information available to highway users and operators, and to assess the benefits of integrating the functions of RWIS, other weather information sources (e.g., NOAA/NWS), and transportation management and traveler information operations for a rural part of the transportation system.

The hypothesis is that if such a system is developed, then risk exposure will decrease, which improves safety and operations; maintenance and traffic management will be conducted more cost-effectively, which saves time and money by public agencies; and customer satisfaction will increase due to improved and more available information.

Evaluation is an integral part of this project, and measures of success shall be of two types: output and outcome. The output measures consist of evaluating the performance of the system (i.e., does the integrated system function as designed). The outcome measures consist of measuring the benefits of the service, such as the operational improvements achieved by developing such an integrated system. Outcome measures should be in a variety of terms, such as cost savings by public agencies, time savings, reductions in crashes, etc. When possible, improvements shall be measured incrementally (i.e., measure the value added when X is integrated, then Y, then Z, etc). Efforts should also be included to document the many benefits that are intangible or are very difficult to measure.

III. Partnerships

The USDOT will work with a public/private partnership, with the State DOT taking the lead role. The State DOT will ensure that needed institutional and partnership arrangements are in place and required funding is available, that the project can be completed within the required timeframe, and that the private sector is involved as an infrastructure provider (e.g., data collection and processing), as a franchisee (e.g., for information dissemination), or in another capacity contributing significant resources to the project.

All needed partnership arrangements and institutional agreements to support the project should be documented with signed Memorandums of Understanding (MOUs) that clearly define responsibilities and relationships. Copies of the MOUs should be included in the proposal. Partners are also strongly encouraged to seek participation from certified minority business enterprise firms, women business enterprise firms, disadvantaged business enterprise firms, historically black colleges and universities, Hispanic serving institutions, and other minority colleges.

IV. Scope

This project involves the integration of multiple information systems and improvement of information presentation of atmospheric and road surface condition information to highway users and operators. Any or all facets of the integrated system can be further developed and expanded in order to meet the project objectives. This includes, but is not limited to alternative approaches to data collection (e.g., outfitting snow plows with automatic vehicle location devices), advanced data processing and fusing to develop improved "nowcasts" and forecasts (e.g., extrapolating Doppler radar data and combining it with meso-scale numerical forecasts), two-way integration of specialized observations and forecasting (e.g., linking a RWIS and a Traffic Operations Center (TOC) with a provider to develop meso-scale forecasts), and improved information packaging and dissemination (e.g., providing route-specific atmospheric and road surface condition information to a range of users and operators in a timely and cost-efficient manner).

V. Delineation of Work

The following task descriptions are intended to provide a framework for completing the project. The selected project team will be expected to describe a detailed effort in its Technical Plan that demonstrates an understanding of the project objectives and can be realistically accomplished within the time and funding constraints.

1. Establish Baselines and Refine System Design

Establish baselines of existing systems (i.e., the RWIS and TOC infrastructure currently in place, and the extent to which it is integrated), describing the state-of-the-practice in weather and road condition data collection, information processing, and information packaging and dissemination that are provided within the project area. Describe in a similar manner ITS-based services that are also provided within the area affected by this project. It is recognized that these systems will not be strictly rural, and will include urban components.

Document weather-based decisionmaking by a range of highway operators and users in the project area. Characterize the activities and decisions of highway users and operators in terms of their use and need for weather and road condition information. Identify the sources of the information, the agencies responsible for each type of information, and the means of information dissemination.

Refine the system design concept that was submitted in the proposal in coordination with the independent evaluator. Comments from the FHWA technical representative on the system design concept should be incorporated, as well as the information gathered within this task. The report should document all aspects of the system, especially system integration and information packaging. It should identify areas in need of improved weather and road condition information, and how these areas will be improved within the scope of this project. It should also include estimates of the projected benefits of these improvements, as well as a description of the capabilities to collect the data needed for an independent evaluation. Submit this report to the FHWA for approval.

Note: The project team shall not proceed with the following tasks without written approval of the refined system design from the FHWA technical representative.

2. System Development

Develop the integrated system as defined in the system design. Demonstrate that the system functions as designed, including the expanded information packaging, in a controlled environment prior to full-scale operations. The system integration can be done over a distributed network, or centrally, e.g., in a TOC. Throughout system development, document technical and institutional issues that impact the project, including issues regarding the architecture and standards of the system, especially within the context of the National ITS Architecture and National Weather Service architecture.

3. System Operation

Operate the system over a period of time sufficient for evaluation, coordinating system operations with the independent evaluator to ensure that the appropriate data is collected. Throughout system operations, document technical and institutional issues that impact the project, including issues regarding the architecture and standards of the system, especially within the context of the National ITS Architecture and National Weather Service architecture.

4. System Evaluation and Final Documentation

Coordinate activities with the independent evaluator to conduct a thorough system evaluation. Synthesize the technical and institutional issues documented in earlier tasks. Submit a final report to the FHWA that describes the project and its findings, including, but not limited to the benefits, and technical and institutional issues.

VI. Administration

Schedule

Total project time is expected to be 30 months. A start date of October, 1997, should be assumed for the purpose of responding to this invitation.

Funding

The amount of Federal funding for this project is $1,300,000. Total Federal ITS funding is not to exceed 80 percent of the total cost of the project. The remaining 20 percent would be provided by a combination of non-ITS Federal-aid, State, local, and private funding. The project will be independently evaluated under separate funding. The USDOT will fund this project through a Cooperative Agreement between the Federal Highway Administration and a State DOT.

Points of Contact

For technical concerns, the primary point of contact is the Agreement Officer's Technical Representatives (AOTR), Mr. Paul Pisano. A field technical representative from the FHWA Division Office will be identified subsequent to award. For all other concerns the point of contact is the Agreement Officer (AO), the FHWA Division Office representative who enters into the cooperative agreement. The AO will be named after a team is selected.

Acceptance of Work

All work submitted will be subject to the review and acceptance of the AOTR.

Disputes

Any disputes or claims shall be submitted to the AO. The recipient may appeal the decision of the AO to the Director of the Office of Safety and Traffic Operations Research and Development for further review. However, the decision of the Director shall be final and not subject to further review.

Governing Regulations

The parties to this cooperative agreement acknowledge that all work shall be governed by 49 CFR Part 19, and other applicable regulations.

VII. Instructions to Applicants

Interested parties are invited to submit a proposal containing sufficient information to enable an evaluation of the proposal based on the evaluation criteria provided under section VIII of this preamble. A proposal shall not exceed 50 pages in length including title, index, tables, maps, appendices, abstracts, and other supporting materials. A page is defined as one side of an 8½ by 11 inch paper, with a type font no smaller than 12 point. Proposals greater than 50 pages will not be accepted. Ten copies plus an unbound reproducible copy of the proposal shall be submitted. The cover sheet or front page of the proposal shall include the name, address, and phone number of an individual to whom correspondence and questions about the application may be directed. Proposals shall include a Technical Plan and a Financial Plan that describe how the proposed objectives will be met within the specified timeframe and budget. The plans should be structured such that they contain the following information:

Technical Plan

1. Inter-agency, Inter-jurisdictional and Public/Private Partnership Arrangements

Proposals should describe the partnership arrangements, which includes providing the information described in the section entitled Partnerships above.

2. Technical Approach

Proposals should include a system design concept describing the extent of the system integration (e.g., data inputs, ''nowcasting,'' forecasting and other data processing) and the information packaging (i.e., expanded or improved weather and road condition information for various operators and users) for the integrated weather information system that is to be developed and evaluated under this project. Proposals should provide a concise description of the State or region where this project will take place, including a description of current systems in place that are to be part of the integrated weather information system, as well as the physical location covered by the integrated system. This should include the extent of deployment on the transportation network, as well as the services to be provided on that network. System integration is not restricted to rural systems, and may include integrating rural and urban components. This system design concept should be specific to the extent that it can be evaluated as part of the selection process, recognizing that it will be further refined in the beginning of the project. Proposals should describe the technical approach by which the system design concept will be refined, developed, operationally tested, evaluated and documented. It should set forth a schedule of the work to be performed, document assumptions and technical uncertainties, and propose specific approaches for the resolution of any uncertainties.

3. Management and Staffing Plan

The Technical Plan should include a management and staffing plan that provides the names of all personnel and the positions they will occupy as related to this project. The estimated professional and technical staffing shall be provided in staff-months and staff-hours. The management and staffing plan should demonstrate that the project manager is capable, available, and able to commit to a level of involvement that ensures project success. Biographical summaries of key personnel shall also be included.

4. Project Evaluation

Proposals should include a detailed discussion that demonstrates an understanding of the importance of ensuring that the proposed system provides the capabilities and data access needed to measure the anticipated outputs and outcomes. Proposals should describe low-risk methods to work with the independent evaluator to ensure that benefits are measurable. A demonstrated understanding of the role of the evaluation should be evident in the organizational and management approach of the proposal. Proposals should include a description of the methods and capabilities included in the design of the system that will allow for the measurement of anticipated outputs and outcomes by the independent evaluator. Development of the evaluation plan, and the actual data collection for evaluation will be the responsibility of the independent evaluator in coordination with the project team.

5. National ITS System Architecture

Proposals should provide a statement of intent to implement a system that is consistent with the National ITS Architecture, including any national ITS standards, protocols, or standards requirements as these emerge from the National ITS Architecture Development Program. Copies of the Architecture Definition Documents, the draft Standards Requirements Document, and the Standards Development Program from the Architecture Development Program are available from ITS America, 400 Virginia Avenue, SW., Suite 800, Washington, D.C. 20024, telephone (202) 484–4847. Electronic copies are available on the ITS America Internet Home Page, http://www.itsa.org. These documents provide insight into the definition of the National Architecture, and the emerging approaches being taken towards standardizing interfaces that would support the integration of transportation management components.

Financial Plan

The proposal shall provide a description of the total cost of achieving the objectives of the project, and the partnership's plans for raising the matching funds required by this solicitation. The proposal shall provide a statement of commitment from the proposed project partners that required funding levels will be available. All financial commitments, from both the public and private sectors, should be documented in signed MOUs and included in the proposal. The FHWA prefers that project costs be submitted using Standard Form 1411 and FHWA Form 1411–1 (Proposed); however, other formats may be used.

The cost share must be from non-federally derived funding sources and must consist of either cash, substantial equipment contributions that are wholly utilized as an integral part of the project, or personnel services dedicated full-time to the project for a substantial period, as long as such personnel are not otherwise supported with Federal funds. The non-federally derived funding may come from State, local government, or private sector partners. In an ITS partnership, as with other DOT cost-share contracts, it is inappropriate for a fee to be included in the proposed budget as part of a partner's contribution to the project. This does not prohibit appropriate fee payments to vendors or others who may provide goods or services to the partnership. It also does not prohibit business relationships with the private sector which result in revenues from the sale or provision of ITS products and services.

The USDOT, the Comptroller General of the U.S., and, if appropriate, the States have the right to access all documents pertaining to the use of Federal ITS funds and non-Federal contributions. Non-Federal partners must submit sufficient documentation during final negotiations and on a regular basis during the life of the project to substantiate these costs. Such items as direct labor, fringe benefits, material costs, consultant costs, subcontractor costs, and travel costs should be included in that documentation.

VIII. Evaluation Criteria

Applicants must submit an acceptable Technical Plan and Financial Plan that provide sound evidence that the proposed partnership can successfully meet the objectives of the project. The following criteria will be used in selecting the site.

1. Technical Approach

Proposals will be evaluated on the technical approach to the project, particularly the system design concept, and the extent to which the objectives of the project can be met through the proposed approach. Some of the specific items that will be included in the review of the technical approach include:

(a) The extent of the rural transportation system affected by the project (e.g., how much area will be covered and to what level);

(b) The number and types of services to be provided by the project;

(c) The system design concept's consistency with the National ITS Program Plan and the ARTS Strategic Plan;

(d) The system design concept's compliance with the National ITS Architecture and standards development, including the NTCIP Environmental Sensor Station (ESS) standard currently being developed;

(e) The proposed methodology to refine, develop, operationally test, evaluate (including the methodology by which the project team will coordinate with the independent evaluator), and document the system; and

(f) The innovativeness of the approach.

2. Management and Staffing Plan

Proposals will be evaluated based on the completeness and thoroughness of the management and staffing plan, including organization of the team, staffing allocation, and work schedule. Some of the specific items that will be included in the review of the technical approach include:

(a) The experience and background of the team, particularly the project manager;

(b) The level of commitment of the project manager; and

(c) The quality of the partnership arrangements, including a strong level of commitment between a range of partners, level of demonstrated cooperation, information sharing and working relationships, and level of participation of minority business enterprise firms, women business enterprise firms, disadvantaged business enterprise firms, historically black colleges and universities, Hispanic serving institutions, and other minority colleges.

3. Financial Plan

Proposals will be evaluated based on the total projected cost of the project, as well as the individual staffing costs. The level of cost-sharing will be taken into account. Funds can be used to purchase and install new equipment, including field sensor stations, though it is recognized that such allocations will impact the extent to which the objectives can be met.

Basis of Applicant Selection

Selecting an offer for this project will take into account the relative importance of the evaluation criteria, as follows:

1. The Technical Approach will be most important;

2. The Management and Staffing Plan, and the Financial Plan are of equal importance.

Authority: Secs. 6051–6059, Pub. L. 102–240, 105 Stat. 1914, 2189; 23 U.S.C. 307 note; 49 CFR 1.48.

Issued on: June 6, 1997.

Jane Garvey,

Acting Federal Highway Administrator.

[FR Doc. 97–15487 Filed 6–12–97; 8:45 am]

BILLING CODE 4910–22–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 F.R. 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 F.R. 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, ''Revealing an Ancient Message: A Synagogue Mosaic from Sepphoris'' (See list [1]), imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the Fine Arts Museums of San Francisco, San Francisco, California from on or about May 17, 1997 to on or about August 10, 1997, and at the Knoxville Museum of Art, Knoxville, Tennessee, September 27, 1997 to on or about January 4, 1998, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register.**

Dated: June 9, 1997.

Les Jin,

General Counsel.

[FR Doc. 97–15583 Filed 6–12–97; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Neila Sheahan, Assistant General Counsel, at 202/619–5030, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, S.W., Washington, D.C. 20547–0001.

federal register

Friday
June 13, 1997

Part II

Department of Housing and Urban Development

Federally Assisted Low-Income Housing Drug Elimination Grants; Safe Neighborhood Grants; Notice of Funding Availability—Fiscal Year 1997

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket Nos. FR–4191–N–02; FR–4212–N–03]

Federally Assisted Low-Income Housing Drug Elimination Grants Notice of Funding Availability—FY 1997; Safe Neighborhood Grants Notice of Funding Availability—Fiscal Year 1997

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notices of Funding Availability (NOFA) for Fiscal Year (FY) 1997; List of Field Offices.

SUMMARY: On May 23, 1997, HUD published the FY 1997 NOFA for Federally Assisted Low-Income Housing Drug Elimination Grants and the FY 1997 NOFA for Safe Neighborhood Grants. A list of HUD field offices, with addresses and phone numbers, was attached to each of these NOFAs. However, HUD inadvertently omitted certain field offices from the list. Therefore, today's notice provides the complete list of HUD field offices with their addresses and phone numbers.

DATES: This notice does not change the application submission deadlines provided in each of the May 23, 1997 NOFAs. Applications for grants under the Federally Assisted Low-Income Housing Drug Elimination program must still be received at the local HUD field office on or before July 22, 1997 at 4 p.m. local time. Applications for Safe Neighborhoods Grants must still be received at the local HUD field office on or before August 21, 1997 at 3 p.m. local time.

ADDRESSES: This notice does not change the application submission information provided in each of the May 23, 1997 NOFAs. Applications may still be obtained from the HUD field office having jurisdiction over the location of the applicant project, and from the Multifamily Housing Clearinghouse by calling 1–800–685–8470. Applications (original and two copies) must still be received by the deadline at the appropriate HUD field office with jurisdiction over the applicant project, Attention: Director of Multifamily Housing.

FOR FURTHER INFORMATION CONTACT: For application materials and project-specific guidance, please contact the Office of the Director of Multifamily Housing in the HUD field office having jurisdiction over the project(s) in question.

For the Federally Assisted Low-Income Housing Drug Elimination Grants program: Policy questions of a general nature may be referred to Michael Diggs, Office of Multifamily Housing Asset Management, Department of Housing and Urban Development, Room 6182, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–0558. (This is not a toll-free number.) Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

For Safe Neighborhood Grants: For program, policy, and other guidance, contact Henry Colonna, Department of Housing and Urban Development, Virginia State Office, 3600 West Broad Street, Richmond, VA 23230–4920, telephone (804) 278–4505, extension 3027 (or (804) 278–4501 TTY).

SUPPLEMENTARY INFORMATION: On May 23, 1997, HUD published the fiscal year (FY) 1997 notice of funding availability (NOFA) for the Federally Assisted Low-Income Housing Drug Elimination Grants program (62 FR 28564). On the same day, HUD also published the FY 1997 NOFA for Safe Neighborhood Grants (62 FR 28586). A list of HUD field offices, with addresses and phone numbers, was attached as Appendix A to each of these NOFAs (62 FR 28572, 28597). The list provides information to applicants about where to request and submit applications, and where to go for further information. The list published on May 23, 1997 for both NOFAs, however, inadvertently did not include all of the appropriate HUD field offices. Therefore, HUD is publishing this notice to provide a full list of field offices for purposes of the FY 1997 NOFA for Federally Assisted Low-Income Housing Drug Elimination Grants and the FY 1997 NOFA for Safe Neighborhood Grants. Potential applicants under those two NOFAs should refer to today's list when seeking further information, when seeking an application form or kit, and when submitting their applications.

Accordingly, FR Doc. 97–13520, the Federally Assisted Low-Income Housing Drug Elimination Grants Notice of Funding Availability—Fiscal Year 1997, published in the **Federal Register** on May 23, 1997 (62 FR 28564); and FR Doc. 97–13517, the Safe Neighborhood Grants Notice of Funding Availability—Fiscal Year 1997, published in the **Federal Register** on May 23, 1997 (62 FR 28586), are amended by revising Appendix A of each document to read as follows:

Appendix A—Multifamily Division Directors

New England

BOSTON

Jeanne McHallam, Director, Multifamily Division, HUD Massachusetts State Office, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Room 375, Boston, MA 02222–1092, (617) 565–5101

HARTFORD

Robert S. Donovan, Director, Multifamily Division, HUD Connecticut State Office, 330 Main Street, First Floor, Hartford, CT 06106–1860, (203) 240–4524

MANCHESTER

Loren Cole, Director, Multifamily Division, HUD New Hampshire State Office, Norris Cotton Federal Building, 275 Chestnut Street, Manchester, NH 03103–2487, (603) 666–7755

PROVIDENCE

Luisa Osborne, Director, Multifamily Division, HUD Rhode Island State Office, 10 Weybosset Street, Providence, RI 02903–3234, (401) 528–5354

New York/New Jersey

NEW YORK

Beryl Niewood, Director, Multifamily Division, HUD New York State Office, 26 Federal Plaza, New York, NY 10278–0068, (212) 264–0777 x3716

BUFFALO

Rosalinda Lamberty, Director, Multifamily Division, HUD Buffalo Area Office, Lafayette Court, 465 Main Street, 5th Floor, Buffalo, NY 14203–1780, (716) 551–5722

NEWARK

Encarnacion Loukatos, Director, Multifamily Division, HUD New Jersey State Office, One Newark Center, 13th Floor, Newark, NJ 07102–5260, (201) 622–7900 x3400

Mid-Atlantic

PHILADELPHIA

Thomas Langston, Director, Multifamily Division, HUD Pennsylvania State Office, The Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107–3390, (215) 656–0548

BALTIMORE

Ina Singer, Director, Multifamily Division, HUD Maryland State Office, City Crescent Building, 10 South Howard Street, Fifth Floor, Baltimore, MD 21201–2505, (410) 962–2520

CHARLESTON

Peter Minter, Acting Director, Multifamily Division, HUD West Virginia State Office, 405 Capitol Street, Suite 708, Charleston, WV 25301–1795, (304) 347–7036

PITTSBURGH

Edward Palombizio, Director, Multifamily Division, HUD Pittsburgh Area Office, 339 Sixth Avenue, Sixth Floor, Pittsburgh, PA 15222–2515, (412) 644–6394

RICHMOND

Charles Famuliner, Director, Multifamily Division, HUD Virginia State Office, The 3600, Centre 3600 West Broad Street, P.O. Box 90331, Richmond, VA 23230–0331, (804) 278–4505

WASHINGTON

Felicia Williams, Director, Multifamily Division, HUD District of Columbia Office, 820 First Street, NE, Washington, DC 20002–4205, (202) 275–7543

Southeast

ATLANTA

Robert W. Reavis, Jr., Director, Multifamily Division, HUD Georgia State Office, Richard B. Russell Federal Building, 75 Spring Street, SW, Atlanta, GA 30303–3388, (404) 331–4426

BIRMINGHAM

Herman Ransom, Director, Multifamily Division, HUD Alabama State Office, Beacon Ridge Tower, 600 Beacon Parkway West, Suite 300, Birmingham, AL 35209–3144, (205) 290–7667

CARIBBEAN

Minerva Bravo-Perez, Director, Multifamily Division, HUD Caribbean Office, New San Juan Office Building, 159 Carlos E. Chardon Avenue, San Juan, PR 00918–1804, (809) 766–5401

COLUMBIA

Robert Rifenberick, Director, Multifamily Division, HUD South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Columbia, SC 29201–2480, (803) 253–3240

GREENSBORO

Daniel A. McCanless, Director, Multifamily Division, HUD-Greensboro Office, Kroger Building, 2306 West Meadowview Road, Greensboro, NC 27407–3707, (910) 547–4020

JACKSON

Reba G. Cook, Director, Multifamily Division, HUD Mississippi State Office, Dr. A.H. McCoy Federal Building, 100 West Capitol Street, Room 910, Jackson, MS 39269–1016, (601) 965–4700

JACKSONVILLE

Ferdinand Juluke, Director, Multifamily Division, HUD Jacksonville Area Office, Southern Bell Tower, 301 West Bay Street, Suite 2200, Jacksonville, FL 32202–5121, (904) 232–3528

KNOXVILLE

William S. McClister, Director, Multifamily Division, HUD Knoxville Area Office, John J. Duncan Federal Building, 710 Locust Street, Third Floor, Knoxville, TN 37902–2526, (615) 545–4406

LOUISVILLE

R. Brooks Hatcher, Jr.,

Director, Multifamily Division, HUD Kentucky State Office, 601 West Broadway, P.O. Box 1044, Louisville, KY 40201–1044, (502) 582–6124

NASHVILLE

Ed M. Phillips, Director, Multifamily Division, HUD Tennessee State Office, 251 Cumberland Bend Drive, Suite 200, Nashville, TN 37228–1803, (615) 736–7154

Midwest

CHICAGO

Ed Hinsberger, Director, Multifamily Division, HUD Illinois State Office, Ralph H. Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604–3507, (312) 353–9174

CINCINNATI

Patricia A. Knight, Director, Multifamily Division, HUD Cincinnati Area Office, 525 Vine Street, Cincinnati, OH 45202–3253, (513) 684–2881

CLEVELAND

Preston Pace, Director, Multifamily Division, HUD Cleveland Area Office, Renaissance Building, 1350 Euclid Avenue, Suite 500, Cleveland, OH 44115–1815, (216) 522–4112

COLUMBUS

Donald Jakob, Director, Multifamily Division, HUD Ohio State Office, 200 North High Street, Columbus, OH 43215–2499, (614) 469–2156

DETROIT

Robert Brown, Director, Multifamily Division, HUD Michigan State Office, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, MI 48226–2592, (313) 226–7107

GRAND RAPIDS

Shirley Bryant, Acting Director, Multifamily Division, HUD Grand Rapids Area Office, Trade Center Building, 50 Louis Street, NW, Third Floor, Grand Rapids, MI 49503–2648, (616) 456–2122

INDIANAPOLIS

Henry Levandowski, Director, Multifamily Division, HUD Indiana State Office, 151 North Delaware Street, Indianapolis, IN 46204–2526, (317) 226–6305

MILWAUKEE

Joseph C. Bates, Director, Multifamily Division, HUD Wisconsin State Office, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Suite 1380, Milwaukee, WI 53203–2289, (414) 297–3159

MINNEAPOLIS-ST. PAUL

Howard Goldman, Director, Multifamily Division, HUD Minnesota State Office, 220 Second Street, South, Minneapolis, MN 55401–2195, (612) 370–3051

Southwest

FORT WORTH

E. Ross Burton, Director, Multifamily Division, HUD Texas State Office, 1600 Throckmorton, P.O. Box 2905, Fort Worth, TX 76113–2905, (817) 885–5967

ALBUQUERQUE

Robert L. Salazar, Chief, MF Branch, HUD New Mexico State Office, 625 Truman Street, NE, Albuquerque, NM 87110–6463, (505) 262–6465

DALLAS

Bobby W. Cook, Chief, MF Branch, HUD Dallas Area Office, 525 Griffin Street, Room 860, Dallas, TX 75202–5007, (214) 767–8372

HOUSTON

Albert Cason, Director, Multifamily Division, HUD Houston Area Office, Norfolk Tower, 2211 Norfolk, Suite 200 Houston, TX 77098–4096 (713) 313–2274 x7063

LITTLE ROCK

Elsie Whitson, Director, Multifamily Division, HUD Arkansas State Office, TCBY Tower, 425 West Capitol Avenue, Suite 900, Little Rock, AR 72201–3488, (501) 324–5937

NEW ORLEANS

Ann Kizzier, Director, Multifamily Division, HUD Louisiana State Office, Fisk Federal Building, 1661 Canal Street, Suite 3100, New Orleans, LA 70112–1887, (504) 589–7236

OKLAHOMA CITY

Kevin McNeely, Director, Multifamily Division, HUD Oklahoma State Office, 500 West Main, Suite 400, Oklahoma City, OK 73102, (405) 553–7410

SAN ANTONIO

Elva Castillo, Director, Multifamily Division, HUD San Antonio Area Office, Washington Square, 800 Dolorosa Street, San Antonio, TX 78207–4563, (210) 229–4914

SHREVEPORT

Anthony J. Hernandez, Chief, MF Branch, HUD Shreveport Area Office, 401 Edwards Street, Suite 1510, Shreveport, LA 71101–3107, (318) 676–3393

TULSA

Faye O'Connor, Chief, MF Branch, HUD Tulsa Area Office, 50 East 15th Street, Tulsa, OK 74119–4030, (918) 581–7456

Great Plains

KANSAS CITY

Joan Knapp, Director, Multifamily Division, HUD Kansas/Missouri State Office, Gateway Tower II, 400 State Avenue, Kansas City, KS 66101–2406, (913) 551–5504

DES MOINES

Donna M. Davis, Director, Multifamily Division, HUD Iowa State Office, Federal Building, 210 Walnut Street, Room 239, Des Moines, IA 50309–2155, (515) 284–4736

OMAHA

Steven L. Gage, Director, Multifamily Division, HUD Nebraska State Office, Executive Tower Centre, 10909 Mill Valley Road, Omaha, NE 68154–3955, (402) 492–3114

ST. LOUIS

Paul Dribin, Director, Multifamily Division, HUD St. Louis Area Office, Robert A. Young Federal Building, 1222 Spruce Street, Third Floor, St. Louis, MO 63103–2836, (314) 539–6268

Rocky Mountain

DENVER

Larry Sidebottom, Director, Multifamily Division, HUD Colorado State Office, 633 17th Street, Denver, CO 80202–3607, (303) 672–5343

Pacific/Hawaii

SAN FRANCISCO

Janet Browder, Director, Multifamily Division, HUD California State Office, Phillip Burton Federal Building and U.S. Courthouse, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, CA 94102–3448, (415) 436–6579

HONOLULU

Michael S. Flores, Director, Multifamily Division, HUD Hawaii State Office, Seven Waterfront Plaza, 500 Ala Moana Boulevard, Suite 500, Honolulu, HI 96813–4918, (808) 522–8184

LAS VEGAS

Dottie Manz, Chief, MF Branch, HUD Nevada State Office, 1500 East Tropicana Avenue, Suite 205, Las Vegas, NV 89229–6516, (702) 388–6247

LOS ANGELES

Joyce Biase, Director, Multifamily Division, HUD Los Angeles Area Office, 1615 West

Olympic Boulevard, Los Angeles, CA 90015–3801, (213) 251–7030

PHOENIX

Sally Thomas, Director, Multifamily Division, HUD Arizona State Office, Two Arizona Center, 400 North 5th Street, Suite 1600, Phoenix, AZ 85004–2361, (602) 379–4667

SACRAMENTO

William F. Bolton, Acting Director, Multifamily Division, HUD Sacramento Area Office, 777 12th Street, Suite 200, Sacramento, CA 95814–1977, (916) 498–5220 x322

SAN DIEGO

Sebastian Adame, Chief, MF Branch, HUD San Diego Area Office, Mission City Corporate Center, 2365 Northside Drive, Suite 300, San Diego, CA 92108–2712, (619) 557–2600

Northwest/Alaska

SEATTLE

Willie Spearmon, Director, Multifamily Division, HUD Washington State Office, Seattle Federal Office Building, 909 1st Avenue, Suite 200, Seattle, WA 98104–1000, (206) 220–5207

ANCHORAGE

Paul O. Johnson, Director, Multifamily Division, HUD Alaska State Office, University Plaza Building, 949 East 36th Avenue, Suite 401, Anchorage, AK 99508–4399, (907) 271–4610

PORTLAND

Thomas C. Cusack, Director, Multifamily Division, HUD Oregon State Office, 400 SW Sixth Avenue, Portland, OR 97204–1632, (503) 326–4033

Dated: June 9, 1997.

Camille Acevedo,

Assistant General Counsel for Regulations.

[FR Doc. 97–15507 Filed 6–12–97; 8:45 am]

BILLING CODE 4210–27–P

federal register

Friday
June 13, 1997

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 25, 121, and 135

Revised Standards for Cargo or Baggage Compartments in Transport Category Airplanes; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25, 121 and 135

[Docket No. 28937, Notice No. 97–10]

RIN 2120–AG42

Revised Standards for Cargo or Baggage Compartments in Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice of proposed rulemaking proposes to upgrade the fire safety standards for cargo or baggage compartments in certain transport category airplanes by eliminating Class D compartments as an option for future type certification. Compartments that could no longer be designated as Class D would have to meet the standards for Class C or Class E compartments, as applicable. The Class D compartments in certain transport category airplanes manufactured under existing type certificates and used in passenger service would have to meet the fire detection and suppression standards for Class C Compartments by early 2001 for use in air carrier, commuter, on-demand, or most other commercial service. The Class D compartments in certain transport category airplanes manufactured under existing type certificates and used only for the carriage of cargo would also have to meet such standards or the detection standards for Class E compartments by that date for such service. These improved standards are needed to increase protection from possible in-flight fires.

DATE: Comments must be received on or before September 11, 1997.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 28937, 800 Independence Avenue SW, Washington, DC 20591, or delivered in person to Room 915G at the same address. Comments delivered must be marked: Docket 28937. Comments may also be submitted electronically to 9-n prm-cmts@faa.dot.gov. Comments may be inspected in Room 915G weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. In addition, the FAA is maintaining an information docket of comments in the Transport Airplane Directorate (ANM–100), Federal Aviation Administration, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Comments in the information docket may be inspected in the Transport Airplane Directorate weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Gary L. Killion, Manager, Regulations Branch, ANM–114, Transport Airplane Directorate, Aircraft Certification Service, FAA, 1601 Lind Ave. S.W., Renton, Washington 98055–4056; telephone (425) 227–2114.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the proposed rulemaking by submitting such written data. views, or arguments as they may desire. Comments relating to any environmental, energy, federalism, or economic impacts that might result from adoption of the proposals contained in this notice are also invited. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit comments, in triplicate, to the Rules Docket address specified above. All comments will be considered by the Administrator before action on the proposed rulemaking is taken. The proposals contained in this notice may be changed in light of the comments received. All comments will be available in the Rules Docket, both before and after the closing date for comments, for examinations by interested persons. 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 must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No.'' The postcard will be dated and time stamped and returned to the commenter.

Availability of NPRM

An electronic copy of this document may be downloaded using a modern an suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339), the **Federal Register**'s electronic bulletin board service (202–512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone 202–267–5948).

Internet users may reach the FAA's web page at http://www.faa.gov or the Federal Register's web page at http://www.access.gpo.gov/su__docs for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591; or by calling (202) 267–9680. Communications must identify the notice number of this NPRM. Persons interested in placing on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution system, which describes the application procedures.

Background

There have been a number of fires in the cargo or baggage compartments of transport category airplanes in recent years, some of which have resulted in accidents and loss of life. Although the FAA has already taken action to improve the safety of these compartments by improving the fire-resistance of liners, the continuing occurrence of fires and the seriousness of the consequences of an uncontrolled fire have resulted in a review of the entire cargo compartment classification system.

During the early post-World War II period, it was recognized that timely detection of a fire by a crewmember of the airplane while at his or her station and prompt control of the fire when detected were necessary for protection of the airplane from a fire originating in a cargo or baggage compartment. Because the requirements for detection and extinguishment varied depending on the type and location of the compartment, a classification system was established. Three classes of cargo or baggage compartments were initially established and defined in 1946 (Amendment 04–1 to part 04 of the Civil Air Regulations (CAR) effective November 1, 1946) as follows:

Class A—A compartment in which the presence of a fire would be easily discovered by a crewmember while at his or her station, and of which all parts are easily accessible in flight. This is typically a small compartment used for crew luggage, and located in the cockpit where a fire would be readily detected and extinguished by a crewmember. Due to the small size and location of the compartment, and the relatively brief time needed to detect and extinguish a fire, a liner is not required to prevent the fire from spreading to other parts of the airplane or protect adjacent structure.

Class B—A compartment with a separate, approved smoke or fire detection system to give warning at the pilot or flight engineer station and with sufficient access in flight to enable a crewmember to effectively reach any part of the compartment with a hand fire extinguisher. Smoke or fire detection systems must provide indication of a fire to the flightcrew. Because it has a smoke or fire detection system, a Class B compartment may be located in an area remote from any crewmember's station. Due to the potentially larger size of the compartment and the greater time interval likely to occur before a fire would be extinguished, a liner meeting the flame penetration standards of § 25.855 and Part I of Appendix F of part 25 must be provided to prevent the fire from spreading to other areas of the airplane and to protect adjacent structure. As originally defined in 1946, there was also to be sufficient access to enable the crewmember to move all contents of a Class B compartment by hand; however, that requirement was subsequently deleted. Although Class B compartments are typically the large cargo portions of the cabins of airplanes carrying a combination of passengers and cargo (frequently referred to as ''combi'' airplanes), there are also Class B compartments that are relatively small baggage compartments located within the pressurized portions of airplanes designed for executive transportation.

Class C—As defined at the time of initial classification in 1946, any compartment that did not fall into either Class A or B was a Class C compartment. Class C compartments differ from Class B compartments primarily in that built-in extinguishing systems are required for control of fires in lieu of crewmember accessibility. As with Class B compartments, smoke or fire detection systems must be provided. Due to the use of a built-in extinguishing system and closer control of ventilating airflow, the distribution of extinguishing agent in a Class C compartment is considerably more uniform than in a Class B compartment. The volumes of Class C compartments in transport category airplanes currently used in domestic service range from approximately 700 to 3,000 cubic feet.

Later, two additional classes of cargo or baggage compartments were established and defined as follows (Amendment 4b–6 to part 4b of the CAR effective March 5, 1952):

Class D—A compartment in which a fire would be completely contained without endangering the safety of the airplane or the occupants. A Class D compartment is similar to a Class C compartment in that both may be located in areas that are not readily accessible to a crewmember. As originally defined in 1952, Class D compartments were required to have smoke or fire detection systems; however, that requirement was deleted shortly thereafter. In lieu of providing smoke or fire detection and extinguishment, Class D compartments are designed to control a fire by severely restricting the supply of available oxygen. Because an oxygen-deprived fire might continue to smolder for the duration of a flight, the capability of the liner to resist flame penetration is especially important. A note following the definition of a Class D compartment stated, ''For compartments having a volume not in excess of 500 cubic feet, an airflow of not more than 1,500 cubic feet per hour is considered acceptable. For larger compartments, lesser airflow may be applicable.'' That note was interpreted to mean that a Class D compartment could not exceed 2,000 cubic feet in volume even if the leakage of air into the compartment was zero. The standards for Class D compartments were later amended (Amendment 25–60, 51 FR 18236, May 16, 1986) to specifically limit the volume of those compartments to 1,000 cubic feet; however, some previously-approved airplanes in air carrier service have Class D compartments as large as 1,630 cubic feet. Other airplanes designed for executive transportation, and also used in on-demand service, have relatively small (15–25 cubic feet) Class D compartments located outside the pressurized portions of the cabin.

Class E—A cargo compartment of an airplane used only for the carriage of cargo (Amendment 4b–10 to part 4b of the CAR, adopted in 1959). A smoke or fire detection system is required. In lieu of providing extinguishment, means must be provided to shut off the flow of ventilating air to or within a class E compartment. In addition, procedures, such as depressurizing a pressurized airplane, are stipulated to minimize the amount of oxygen available in the event a fire occurs in a Class E compartment. Typically, a Class E compartment is the entire cabin of an all-cargo airplane; however, Class E compartments may be located in other portions of the airplane. This, of course, does not preclude the installation of Class A, B, C or D compartments in all-cargo airplanes.

Prior to the adoption of § 25.858 in 1980, fire or smoke detection systems that provided indication within five minutes were considered acceptable. In order to ensure that a fire would be detected in time to permit effective use of the means provided to control it, § 25.858 was adopted at that time (Amendment 25–54, 45 FR 60173, September 11, 1980) to require the detection systems of Class B, C and E compartments to provide visual indication to the flight crew within one minute of the start of the fire.

It should be noted that the overhead storage areas and certain other areas in the cabins of passenger-carrying airplanes are considered ''stowage'' compartments rather than cargo or baggage compartments. They are therefore not required to meet these standards.

Although the standards for Class A, B, C or D compartments make no distinction between compartments used for the carriage of passengers' baggage and those used for cargo, most of the industry experience at the time they were classified was limited to the carriage of passengers' baggage. Furthermore, compartments seldom, if ever, exceeded 200 cubic feet in volume at that time.

When first defined, Class D. compartments were envisioned to be small compartments, although not as small as Class A compartments, and were to suppress a fire by severely restricting the amount of available oxygen. Later, however, larger Class D compartments were installed in transport category airplanes, increasing both the amount of potentially combustible material and the available oxygen. Although there is little or no flow of air into a Class D compartment at the time a fire occurs, there is oxygen available from the air already contained in the compartment. In some instances, particularly when the compartment is larger or only partially filled, the oxygen already present in the compartment may be sufficient to support an intense fire long enough for it to penetrate the liner. Once the integrity of the liner is compromised, there is an unlimited flow of air into the compartment, resulting in an uncontrollable fire that can quickly spread throughout the rest of the airplane.

An uncontrollable fire of this nature did occur in 1980 when a Saudi Arabian Airlines Lockheed L–1011 was destroyed shortly after landing. The fire, which resulted in a loss of 301 lives, was reported to have started in a Class D compartment. (The compartment in that airplane is sometimes described erroneously as a Class C compartment because it has smoke detection. During normal operation, the compartment has ventilating airflow greater than that normally acceptable for a Class D compartment in order to facilitate the carriage of live animals. When a fire is detected, the ventilating airflow is shut off to restrict the supply of oxygen. That compartment, therefore, functioned as a

Class D compartment insofar as that fire is concerned.) The growing concern over this and other reports of cargo or baggage compartment fires led to the adoption of Amendment 25–60. In addition to establishing a maximum volume of 1,000 cubic feet for Class D compartments, Amendment 25–60 also established new standards for liners with greater resistance to flame penetration for use in Class C and D compartments. That amendment applied to transport category airplanes for which an application for type certificate is made on or after June 16, 1985. Similar, but not identical, standards were also established for the liners of other transport category airplanes operated under the provisions of parts 121 or 135 (Amendments 121–202 and 135–31, 54 FR 7384, February 17, 1989). Operators of those airplanes were required to install liners that meet the new standards by March 20, 1991. Unlike Amendment 25–60, Amendments 121–202 and 135–31 do not establish a maximum volume for Class D compartments.

A Boeing 737 operated by Gulf Air was destroyed in September 1983 as a result of an inflight fire in a Class D compartment. The fire, which resulted in 112 casualties, was attributed to an incendiary device.

In February 1988, a fire occurred in the Class D compartment of an American Airlines McDonnell Douglas MD–83. Although there was no loss of life, the fire severely damaged the cabin floor above the compartment. As a result, the FAA initiated a review of service experience and existing regulations, policies and procedures pertaining to the certification of airplanes with Class D compartments. From this review, it was determined that a dozen fires had occurred in Class D Compartments over the past two decades. The consequences of those fires ranged from no airplane damage and no occupant injury to complete destruction of the Saudi Arabian Airlines Lockheed L–1011, as discussed above.

Since the time the review of Class D compartments was completed there have also been seven additional known instances of fires occurring in those compartments. Most resulted in no injuries and little or no damage to the airplane. The exception, insofar as injuries and damage are concerned, was the fire that occurred in May of 1996 in the Class D compartment of a McDonnell Douglas DC–9 operated by Valujet Airlines. Like the American Airlines MD–83 fire noted above, that fire involved the carriage of undeclared hazardous materials; however, unlike the MD–83 fire, it resulted in the destruction of the airplane with a loss of 110 lives. It must be noted that this undeclared shipment occurred in spite of existing prohibitions concerning such shipments.

In the meantime, an additional potential hazard in the cargo or baggage compartments of passenger-carrying airplanes has been brought to light. Due to environmental concerns, the aerosol cans now manufactured for consumer use utilize a mixture of propane, butane and isobutane for propellants in lieu of the non-flammable gases previously used. Passengers are not prohibited from transporting such aerosol cans by the applicable hazardous materials rules, and they have become so widely used by the general public that a high percentage of the pieces of checked baggage contain at least one aerosol can. Tests conducted by the FAA Technical Center show that they can burst if they are in a burning suitcase for little more than two minutes. The tests further show that if the burst occurs in a non-inert atmosphere, such as that of a Class D compartment, there is immediate auto-ignition of the propellant. The accompanying explosion is of such force and intensity that the liner could be rendered ineffective in limiting the supply of oxygen to the fire. Because the liner would be damaged by the explosion rather than by flame penetration, the use of a liner meeting the newer standards of Amendment 25–60 would not provide protection from this hazard. With an unlimited supply of oxygen and the integrity of the liner compromised, there is no longer any effective means to prevent an uncontrollable fire from spreading to other parts of the airplane. If, on the other hand, the burst occurs in an inert atmosphere, such as that of a Class C compartment in which the extinguishing agent has been discharged, the propellant does not ignite and poses no further hazard. (As noted above, smoke or fire detectors are required to provide indication to the flightcrew within one minute after the start of a fire, allowing sufficient time in which to inert the compartment before aerosol cans would burst.) The results of these tests are contained in Report No. DOT/FAA/CT–89/32 entitled ''Fire Hazards of Aerosol Cans in Aircraft Cargo Compartments.'' A copy of that report has been placed in the docket for examination by interested persons.

In at least one instance, a cargo or baggage compartment fire resulted in the plastic cap being melted from an aerosol can. Fortuitously, however, none of the fires experienced since aerosol cans with flammable propellants were introduced were of such intensity or proximity to result in an aerosol can being ruptured.

It must be noted that the probability that an ignition will occur is primarily a function of the flammability of the material being carried in the compartment and the sources of ignition; however, the consequences of a fire, once ignition has occurred, depend greatly on the fire-protection features of the compartment in which it occurs. The FAA is aware of at least four fires that have occurred in Class C compartment during the past decade—a rate of occurrence somewhat commensurate with that of fires occurring in Class D compartments. (Three of those fires involved U.S. air carriers.) In marked contrast to the fatalities that have occurred as a result of fires originating in Class D compartments, the FAA is not aware of any fatality that has occurred as a result of a fire originating in a Class C compartment.

On December 12, 1996, the Air Transport Association of America (ATA), jointed by Vice President Gore, formally announced that its membership would voluntarily install fire or smoke detection systems in Class D compartments. The ATA is a trade organization that represents the major US airlines. Details of the ATA plan—including an implementation schedule—were presented to FAA officials on January 31, 1997. The announcement, which affects approximately 2,700 airplanes operated by 21 ATA members, might appear to make the detection portion of this rulemaking moot; however, the FAA considers the installation of both detection and suppression systems in these compartments to be essential. In any event, a number of airplanes in service with Class D compartments are operated by non-ATA member airlines and would not be subject to voluntary ATA ban.

On May 14, 1997, the ATA announced its commitment to go forward with fire suppression systems as well as detection systems. At this time, however, the airlines have not committed to a time frame for the installation of such systems.

Discussion

As noted above, some Class D compartments are much larger than envisioned at the time they were originally defined. As a result, they typically contain considerably more combustible material than anticipated. Although there is little or no airflow into a Class D compartment at the time a fire occurs, there is oxygen available from the air already contained in the compartment. In some instances, particularly in the larger compartments or those that are only partially filled, this quantity of oxygen may be sufficient to support an intense fire long enough for it to burn through the liner. If the integrity of the liner is compromised, there is an unlimited flow of oxygen into the compartment. With the liner no longer intact and an unlimited flow of oxygen supporting the fire, there is no means to prevent it from spreading rapidly throughout the airplane. Due to the widespread use of aerosol cans with highly flammable propellants, there is now a possibility that an explosion will destroy the liner integrity. A fire originating in even the smallest Class D compartments could, therefore, become uncontrollable. In view of these possibly catastrophic results, part 25 would be amended to eliminate Class D compartments altogether. Compartments in passenger-carrying airplanes that could no longer be approved as Class D compartments would have to meet the standards of Class C compartments.

Due to the uncertainties of the availabilities of suitable suppression agents, as discussed in greater detail under Halon Considerations below, the FAA considered the possibility of requiring only the installation of detection systems. Having a detection system would enable the flight crew to abort a takeoff if an ignition occurred during the brief period before the airplane became airborne. If, on the other hand, the fire occurred after the airplane became airborne, which is more likely, the fire could burn out of control before a safe landing could be made. In that regard, it should be noted that 301 lives were lost in the Saudi Arabian Lockheed L–1011 fire described above even though the compartment did, in fact, have a detection system. Since the installation of detection systems alone would provide only a small incremental increase in safety, it is essential that both detection and suppression systems be provided for these compartments.

As discussed above, Class E compartments may be installed in airplanes used only for the carriage of cargo. As in the case of a Class C compartment, a smoke or fire detection system is required for a Class E compartment. In lieu of providing extinguishment, as required for a Class C compartment, means must be provided to shut off the flow of ventilating air to or within a Class E compartment. In addition, procedures, such as depressurizing the airplane, are stipulated to further minimize the amount of oxygen available in the event a fire occurs in a Class E compartment. Compartments in all-cargo airplanes that could no longer be approved as Class D compartments could be shown to meet the standards of Class E compartments in lieu of those for Class C compartments. The installation of smoke or fire detection systems and the means provided to minimize the amount of oxygen in Class E compartments would provide an improvement in safety for compartments presently designated as Class D and installed in all-cargo airplanes. The benefit from that improvement in the safety of operation of all-cargo airplanes would be commensurate with the cost of converting Class D compartments to Class E compartments.

Part 25 presently contains an inconsistency between the terminology used in § 25.857 and that of § 25.858. The former refers to a ''smoke detector or fire detector system'' for Class B, C or E compartments while the latter refers to compartments with ''fire detection provisions.'' Smoke detectors are, of course, a form of fire detectors since the purpose of installing a smoke detection system is to detect a fire. Nevertheless, the use of different terminology in the two sections may cause confusion. For consistency with § 25.857, § 25.858 would be amended to refer to ''smoke or fire detection provisions.'' This change would place no additional burden on any person since the intent of § 25.858 would remain unchanged.

It is also noted that the term ''fire extinguishing system'' appearing in § 25.857(c) in regard to Class C compartments is actually a misnomer in that the system is not required to extinguish a fire in its entirety, but rather to suppress it until it can be completely extinguished by ground personnel following a safe landing. Although the intent of the term is well-understood, consideration was given to replacing it with ''fire suppression system'' for technical accuracy. While the latter would be more accurate, it appears that changing the terminology at this time could actually create confusion and, therefore, be counter-productive. The term ''fire extinguishing system'' is, therefore, retained in § 25.857(c).

Although the proposed amendment to part 25 would provide new standards for future transport category airplanes, it would not affect airplanes currently in service nor the airplanes that will be produced under type certificates for which application was made prior to the effective date of the amendment. Parts 121 and 135 would, therefore, be amended as well to require the Class D compartments of transport category airplanes type-certificated after January 1, 1958, to meet the standards for Class C or Class E compartments, as applicable, when they are used in air carrier or commercial operations. Although those compartments would not be reidentified as such, they would become the equivalent of Class C (in regard to detection and suppression) or Class E compartments (in regard to detection and means to limit ventilating air flow).

The date January 1, 1958, was chosen so that all turbine-powered transport category airplanes, except for a few 1947 vintage Grumman Mallard amphibians and 1953–1958 vintage Convair 340s and 440s converted from reciprocating power, would be included. No reciprocating-powered transport category airplanes are known to be used currently in passenger service, and the few reciprocating-powered transport category airplanes remaining in cargo service would be excluded. Compliance is not proposed for those older airplanes because their advanced age and small numbers would make compliance impractical from an economic standpoint. This is consistent with the similar exclusions made for those airplanes from other retroactive requirements adopted for flammability of seat cushions (49 FR 43188, October 24, 1984), flammability of cabin interior components (51 FR 26206, July 21, 1986), cargo compartment liners (54 FR 7384, February 17, 1989) and access to passenger emergency exits (57 FR 19244, May 4, 1992). Nevertheless, the FAA specifically requests comments as to the feasibility of requiring those older airplanes to comply and the safety benefits likely to be realized. In the event comments indicate that a significant safety benefit could be realized, the FAA retains the option of including applicability to transport category airplanes type-certificated prior to January 1, 1958, in the final rule.

These proposed changes to parts 121 and 135 would pertain only to operators of transport category airplanes. In Notice 95–5 (60 FR 16230, March 29, 1995), the FAA proposed to adopt improved safety standards for the cargo or baggage compartments in non-transport category (e.g. normal and commuter category) airplanes used in scheduled passenger service. As noted in the preamble to the final rule (60 FR 65832, December 20, 1995), the FAA concurred with commenters that the present requirements for transport category airplanes were not entirely suitable for those smaller airplanes. The

FAA also noted that a rulemaking project to develop cargo or baggage compartment standards suitable for those airplanes has been initiated and that the changes proposed in Notice 95–5 in that regard would be deferred for future rulemaking. The possible need for installing detection and suppression systems in the cargo or baggage compartments of those airplanes will be addressed in conjunction with that rulemaking project.

The proposed changes to parts 121 and 135 concerning Class D compartments would require compliance within three years after the effective date of the amendment. It should be noted that, with the possible exception of those in all-cargo airplanes, Class D compartments would be required to comply with existing standards for Class C compartments. Since this rulemaking would not involve any new technology and installation components are readily available, compliance within three years is feasible. A three-year compliance period would also allow sufficient time for the necessary modifications to be performed while each airplane is out of service for scheduled maintenance activity. Based on information currently available, the FAA, therefore, considers that a three-year compliance period would not impose an unreasonable burden on any operator. Nevertheless, the FAA is specifically requesting comments as to whether a longer compliance period is needed for particular operators (for example, small carriers) due to their particular circumstances, and retains the option of adopting a longer compliance period in the final rule based on such comments. Unless commenters submit specific information justifying a compliance period longer than three years, a three-year compliance period will be adopted as proposed.

As noted above, the compartments in all-cargo airplanes could be shown to meet the standards of Class E compartments in lieu of those for Class C compartments. The proposed three-year compliance period is also considered appropriate for operators that elect to meet the standards for Class E compartments. As in the case of Class C compartment standards, the standards for Class E compartments do not involve any new technology and installation components are readily available.

Assuming that the final rule is adopted as proposed, the FAA also intends to monitor operators' compliance. Such monitoring would serve two purposes. First, it would help to ensure that the carriers are converting affected compartments on a regular basis, so as to avoid disruptions in service, and to avoid requests for extensions near the end of the compliance period. Second, the FAA could inform the public of the operators' progress in achieving compliance.

Therefore, this Notice proposes specific reporting requirements for affected operators under parts 121 and 135. A new paragraph would be added to §§ 121.314 and 135.169 to require each certificate holder to report, on a quarterly basis, the serial numbers of the airplanes in that holder's fleet in which all Class D compartments have been retrofitted to meet Class C or E requirements, and the serial numbers of airplanes that have Class D compartments yet to be retrofitted. (Note that the proposed amendments to §§ 121.314 and 135.169 refer to an initial reporting date of July 1, 1998. The FAA intends to require the initial reports at the beginning of the second quarter after the effective date of the rule; e.g., if the effective date is January 15, 1998, the initial reports will be required by July 1, 1998.)

The FAA intends to make the reported information publicly available, thus allowing the public to monitor the carriers' compliance progress. These proposed reporting requirements are subject to OMB approval, as required by the Paperwork Reduction Act. An information collection control number will be assigned for them if and when OMB approval is given; that number would be listed in part 11, subpart F, of Title 14.

The FAA also seeks comments on what effects, if any, mandatory public disclosure requirements would have on the behavior of operators and others, given that the FAA intends to collect and make the information publicly available. For example would disclosure of the reported information result in compliance with retrofit requirements sooner than would otherwise be the case? If so, what effect would this have on the total amount and timing of benefits and costs of the rule? Also, what would be the best way to collect and make the information available, in order to enhance its usefulness to the public?

As noted above, the new standards adopted in parts 121 and 135 for liners in Class C and D compartments are similar, but not identical, to those adopted for part 25. Section 25.855(c), as amended by Amendment 25–60, states that ceiling and sidewall liner panels in such compartments must meet the test requirements of Part III of Appendix F of part 25. At the time the corresponding standards of parts 121 and 135 were adopted, it was found that panels of glass fiber reinforced resin consistently meet or come very close to meeting the test requirements of Part III of Appendix F. As a result, the cost of replacing them with panels meeting Part III of Appendix F would not have been commensurate with the negligible improvement in safety that could be realized. Section 121.314(a) therefore permits the ceiling and sidewall panels to be constructed of materials that meet the test requirements of Part III of Appendix F or, alternatively, of glass fiber reinforced resin. Similarly, it was also found that panels of aluminum construction came close to meeting the test requirements of Part III of Appendix F, although not as close as those constructed of glass fiber reinforced resin. Section 121.314(a) therefore permits continued use of ceiling and sidewall panels constructed of aluminum provided they were approved prior to March 20, 1989. Since the FAA has not proposed any change in this regard, Class D compartments that are reconfigured to the equivalent of Class C compartments could continue to utilize glass fiber reinforced resin panels or, if they were approved prior to March 230, 1989, aluminum panels in lieu of those meeting the test requirements of Part III of Appendix F.

Due to the recent adoption of part 119 and related amendments to part 121 (60 FR 65832, December 29, 1995), scheduled operations of transport category airplanes with ten to thirty passengers seats must be conducted under the provisions of part 121 rather than part 135. Nevertheless, the proposed changes to part 135 are needed because non-scheduled operations of transport category airplanes with ten to thirty passenger seats may still be conducted under part 135. Scheduled, as well as non-scheduled, operations of transport category airplanes with fewer than ten passenger seats may also remain under part 135.

The comment period for this Notice ends ninety (90) days from today's publication in the **Federal Register**. The FAA has determined that all of the affected Class D compartments could be retrofitted to meet the detection and suppression requirements for Class C or Class E compartments using existing technology; therefore, the FAA anticipates that the proposal to require Class D compartments to meet these requirements will not change significantly, if at all, if a final rule is adopted from this proposal.

Furthermore, the FAA anticipates that, if a final rule is adopted from this proposal, it will be published no later than December of 1997, with an effective date in January of 1998. Assuming, also, that the final rule is adopted with the proposed three-year compliance period, all affected airplanes will be in compliance no later than January of 2001.

Halon Considerations

As proposed in this notice, most Class D compartments would, in essence, become Class C compartments. Operators of all-cargo airplanes would have the option of converting their Class D compartments to Class E compartments; however, operators of passenger airplanes would have to convert their Class D compartments to meet the requirements of Class C. Although they were not previously required to have any means of fire extinguishment, the Class D compartments in passenger airplanes would have to have approved built-in fire extinguishing systems installed as required by § 25.857(c)(2). Currently the most effective and most commonly used extinguishing agent is a halogenated hydrocarbon known as halon.

Although reserve supplies of halon are currently available, the manufacture of additional halon is restricted under the Montreal Protocol, an international agreement to phase out production of ozone-depleting substances, including halon. The Montreal Protocol, in existence since 1987, prohibits the manufacture or import of new halon in all developed countries (including the United States) as of January 1, 1994, and will extend this prohibition to developing countries in the future. At this time, there is no restriction on the use of existing supplies of halon manufactured prior to 1994.

Some operators have expressed concern that they would be required to install suppression systems which would, as a matter of practicality, utilize halon, then be required by the FAA or another government agency to replace those suppression systems with systems that do not utilize halon. The FAA would not do so for two reasons. First, halon has been shown to be an effective suppression agent. The FAA would, therefore, not require its replacement due to safety considerations. Second, the FAA would not require its replacement due to environmental considerations because the FAA lacks the statutory authority to do so in any event. The federal agency that would have that authority is the Environmental Protection Agency (EPA).

The EPA is responsible for the regulation of halons in accordance with the Montreal Protocol and the requirements and authority of Sections 602 and 604 of Title VI of the Clean Air Act. The EPA has advised in its letter of May 8, 1997, that it does not intend to ban the use of halon in installed fire suppression systems for the life of the airplanes, that it can support the use of stockpiled halons to retrofit aircraft holds, and that it can support these policies in international negotiations related to aircraft or environmental matters. A copy of this letter has been placed in the docket for examination by interested persons. Nevertheless, the EPA support for this proposed rulemaking is conditional on airline and aircraft industry support of on-going efforts to develop suitable alternatives for use in future aircraft, and on FAA's accelerated efforts to develop criteria for certification of alternatives, as described more fully below.

In this regard, the FAA has participated in an extensive program to develop criteria on which to evaluate possible alternatives. Although initially proposed by the FAA, this is an international program with active participation by the aviation industry and the regulatory authorities in Europe and Canada. It must be emphasized that the work of this group, which is known as the International Halon Replacement Working Group, is to participate in the research and development of alternative agents and systems—not to select specific agents to replace halons. The FAA has accelerated development of criteria for certification of alternatives and is committed to expeditious review and certification of alternatives as they are developed.

The objective of this program is to develop certification criteria for approval of alternative agents and systems. Such alternatives must, of course, have satisfactory environmental characteristics, such as reduced ozone depletion potential, global warming potential and atmospheric lifetime. In order to maintain the excellent record of in-flight fire safety that exists today, new agents and systems must provide extinguishing and suppression performance equal to or better than the halons. In this regard, the development of minimum performance standards for alternative agents and systems in cargo or baggage compartments has focused on four critical threats—cargo container fires, bulk-loaded luggage fires, surface-burning fires and fires in luggage containing aerosol cans.

In addition to performing their intended function of suppressing or extinguishing fires and having satisfactory environmental characteristics, alternative agents and systems used in airplanes must have certain other characteristics that may not be significant for non-aircraft usage. They, of course, must not present a health hazard during normal operations to persons working within the compartments or animals being shipped in the compartments. Due to the proximity of the occupants of airplanes to the cargo or baggage compartments, the cumulative toxicology effect of the agents, their pyrolytic breakdown products and the by-products of combustion must not pose an unacceptable health hazard when a fire does occur. They must be non-corrosive and otherwise compatible with aircraft materials. Discharge of the agent must leave a minimum of residue that can be safely cleaned up. Finally, such alternative agents and systems must be relatively low in weight for economical use in airplanes.

One very promising alternative is the use of a waterspray system. The FAA has conducted a very comprehensive program to develop cabin waterspray systems as a means of affording occupants more time to escape a post-crash cabin fire. Although the cost of a waterspray system serving only the cabin presently outweighs the likely benefits, it appears that benefits of a waterspray system that could serve as the extinguishing agent in either a cargo or baggage compartment fire, or in a cabin fire, would outweigh the costs of the system.

Since the future availability of halon is uncertain, the FAA specifically invites comments concerning the following:

1. The cost, feasibility and availability of halon for use as the extinguishing agent in former Class D compartments that would be reconfigured to meet the requirements of Class C as a result of this proposed rulemaking;
2. The cost, feasibility and availability of waterspray systems that could provide protection from fires occurring in cargo or baggage compartments as well as in the cabin; and
3. The cost, feasibility and availability of other possible alternative agents.

Regulatory Evaluation

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule: (1) Would generate benefits that justify its costs and is a ''significant regulatory action'' as defined by Executive Order 12866; and (2) would have a significant impact on a substantial number of small entities; and (3) would not constitute a barrier to international trade. The FAA has also determined that this rule is ''significant'' according to DOT Regulatory Polices and Procedures (44 FR 11034; February 26, 1979) because there has been considerable public interest in this subject. These analyses, available in the docket, are summarized below.

Regulatory Evaluation Summary

This analysis separately considers newly-manufactured airplanes and in-service airplanes. There are 20 transport-category airplane models operating under 14 CFR parts 121 or 135 that have Class D compartments. It is assumed that a requirement to retroactively install detection and suppression systems in Class D compartments would become effective on January 1, 1998. The rule would allow three years for compliance; therefore, airplanes that are expected to be permanently retired from service on or before December 31, 2001, are omitted from the analysis. FAA estimates that 2,994 passenger airplanes and 321 all-cargo airplanes would be affected by the proposed rule. These estimates are based on an inventory compiled by the FAA's National Aviation Safety Data Analysis Center (NASDAC) from airplane-specific registry and insurance records.

On December 12, 1996, the Air Transport Association (ATA), joined by Vice President Gore, formally announced that its membership would voluntarily install fire detection systems in Class D cargo or baggage compartments. (The ATA is a trade organization representing the major airlines in the U.S.) ATA's announcement raised an important question—would this voluntary action render part of the proposed rule moot? That is, are the incremental benefits of installing fire-suppression systems in airplanes in which detection systems have already been installed on a voluntary basis sufficient to justify the additional cost of such suppression systems? The FAA finds that, in fact, the benefits of the rule exceed its costs *even after taking into account the effects of ATA's initiative.* Some or all of the important public interests underpinning the FAA's proposal may have motivated the ATA to announce on May 14, 1997, the commitment of its membership to install both detection and suppression systems in passenger-carrying airplanes.

Cost Estimates

Cost estimates consider: (1) the costs associated with submitting compliance reports, (2) certification expenses including one-time equipment and tooling costs, (3) fire detection and suppression equipment and installation costs, and (4) variable operating costs (fuel costs, maintenance and inspection costs, weight off-load costs, and the costs associated with unnecessary diversions initiated because of false alarms). In addition, it is assumed that Class D compartments in all-cargo airplanes would be converted to E compartments which do not require the installation of active suppression systems.

The proposal would require each affected operator to submit a quarterly report listing the serial numbers of those airplanes in its fleet that are in compliance with the provisions of the rule and those that are not in compliance. One major carrier stated that, since records of modifications of this scale are computerized, the reporting requirement would involve less than one-half of one work hour. Initially, however, reports may take additional time to generate as carriers establish procedures, forms, etc. Also, records may not be computerized for smaller carriers. Thus, FAA conservatively estimates that, on average, the rule would require two additional work hours per quarter for each of the approximately 130 affected carriers. Assuming that each carrier will file 11 reports during the three year compliance period and that the fully burdened hourly compensation rate is $65, the estimated nominal cost of this provision to the entire industry is approximately $186,000 or $151,000 at present value (printing, postage, and other miscellaneous costs are assumed negligible).

The FAA would also incur additional costs as a result of this reporting requirement. This analysis conservatively assumes that each of approximately 90 Flight Standards District Offices (FSDO) would, on average, spend approximately one-half of one work hour per quarter processing air carrier reports (some would spend no time, some considerably more than one-half hour). Also, approximately 20 hours per quarter would be required at FAA headquarters to tabulate these reports. Assuming the fully burdened hourly compensation rate is $38, the estimated nominal cost of this provision to FAA is approximately $27,000 or $22,000 at present value (data transmission costs between FAA headquarters and each of the FSDO's is assumed negligible).

Type design approval of the detection and suppression systems would be required for all airplane models affected by the proposal. Type design approval would be in the form of a supplemental type certificate (STC) issued to an applicant other than the manufacturer; or, in the case of the manufacturer, either an STC or an FAA-approved type-design change. (The requirements for obtaining FAA approval are the same in either case.) The FAA assumes that type-design approval would be required for all airplane models affected by the proposed rule. Certain models would require a separate type-certification program for each different variant, while in other cases, all variants would be sufficiently similar that type-design approval could be granted for all variants following only one type-certification program. In some instances, an alternate Class C compartment configuration has already been FAA-approved. For those models or variants, no further type-certification effort would be required.

The cost of a type-certification program of this nature costs ranges from $315,000 to $1.8 million depending on the airplane model. In principle, no more than one type-certification program would be needed per model or variant; since operators could elect to utilize the same detection and suppression system installations on all affected airplanes of that particular type. If additional entities obtain separate type-design approval for a given model or variant, they would do so for economic gain, not as a result of an FAA requirement to do so. Therefore, the analysis assumes the minimum number of type-certification programs theoretically necessary to accomplish the conversions.

Detection-suppression system and installation cost estimates postulate that compartments would be fitted with a system of optical smoke detectors (configured to give indication of a fire within one minute) and a halon suppression system. The analysis further assumes a quantity of halon that would provide: (1) an initial ''knockdown'' discharge, and (2) the capability subsequently to maintain a 3 percent halon concentration for one hour. This is consistent with the standards currently in effect for Class C compartments.

Although the U.S. bans the import of newly-produced halon, sufficient quantities of recycled halon are assumed to be available to meet an initial demand to retrofit the affected fleet. The cost of halon has risen from approximately $2 per pound before production was banned to $20 per pound currently. This analysis assumes that halon used in a retrofit would be available at $20 per pound. Nominal equipment and installation unit (i.e. each airplane) costs range from $13,000 to $101,000 depending on the airplane model.

Although the time to retrofit could be substantial, especially for airplanes with three Class D compartments, industry representatives state that conversions could be accomplished during a C-check, a scheduled maintenance check that occurs about once a year. C-checks are typically accomplished over a four- to five-day period. Conversions conducted concurrent with a C-check could reduce labor hours by as much as 30 percent, because many areas of the airplane are easily accessible. Because most operators would likely perform retrofits during C-checks, this analysis attributes no foregone revenues due to downtime (i.e., time out-of-service) associated with these conversions. Nevertheless, the FAA seeks comments as to whether there are circumstances under which the necessary retrofits could not, or would not, be performed concurrently with a C-check. If so, how long would the airplane in question need to be out of service? Are there circumstances under which these installations would necessitate extending the normal duration of a C-check? If so, how many additional hours or days would this take?

Depending on the airplane model and its configuration, installing fire suppression and detection systems would add between 7 and 300 pounds to the empty weight of an airplane. This weight, in turn, would affect fuel consumption. Incremental fuel consumption costs were estimated for each airplane model based on the weight of additional equipment and suppression agent required, statistical estimates of the change in fuel consumption as a function of incremental weight by airplane type, and estimates of annual flight hours by airplane model.Annual per-airplane incremental fuel consumption estimates range from $50 to $4,900 depending on the airplane model.

Inspection and maintenance of fire detection and suppression systems would include: (1) a leak check; (2) a visual inspection of the system; (3) a sensor test; and (4) a hydrostatic check of the fire bottles. The first three checks could be accomplished at each C-check, i.e., about once per year. A hydrostatic check would involve removing and replacing the fire bottle and would occur once every five years. The bottle would be returned to the halon provider where it would be recharged and checked for leaks.

Six work-hours at a burdened hourly rate of $60 would be required to conduct a leak check of the system of each compartment. A visual inspection of the system would require 1.5 hours per compartment at $60 per hour. Checking the sensors would require about one hour per compartment. It would take two mechanics one hour at a burdened hourly rate of $60 to remove and replace a fire bottle. Fire-bottle vendors typically charge between $600 and $1,000, including shipping, to perform a hydrostatic test and recharge the bottles, irrespective of the size of the bottle. Annual unit maintenance and inspection costs, therefore, range from $700 to $2,100 depending on the airplane model.

Under certain combinations of conditions, some departures might be weight-constrained. In those cases, the additional weight of the fire detection and suppression systems would require an operator to off-load passengers or cargo. The cost of this off-load penalty is measured by estimating the number of displaced passengers or the amount of displaced cargo that could not be accommodated on another flight by the same or competing airline. (On the basis of a statistical analysis of load factors and unaccommodated demand, the FAA estimates that 5 percent of the departures would be fully booked. Generally, most of these flights would not be weight constrained, but this figure is a conservative assumption.) Specifically, this analysis assumes that: (1) On average, approximately 5 percent of the departures would be affected; and (2) 88% of the displaced load would be placed on another flight of the same carrier or on a competing carrier. The cost of unaccommodated off-load—approximately $0.30 per pound—is a weighted average of passenger and cargo revenue derived from revenue, enplanement, and freight data collected by the Department of Transportation's Office of Airline Statistics. Annual unit off-load penalties range from $30 to $800 depending on the airplane model.

Operators would also incur costs associated with flight diversions caused by false fire warnings. Since the probability of a fire is smaller than the reliability level of fire or smoke detectors, most alarms will be false. Costs include incremental airplane operating costs incurred during the diversion and passenger costs. Based on a recent FAA study of Service Difficulty Reports (SDR), proprietary aircraft operating data, and information from airborne fire detection equipment manufactures, the FAA estimates that the frequency of false alarms is approximately 44 per million departures. In the absence of more detailed information, this analysis makes the conservative assumption that all false alarms result in a diversion. Annual diversion costs per airplane range from $60 to $2,800 depending on airplane type.

Based on the above, the FAA estimates total life-cycle costs for the retrofitted fleet in nominal terms are approximately $296 million, or $194 million at present value. For a newly-manufactured airplane delivered to an ATA carrier, the rule would increase life-cycle costs for an average affected airplane by approximately $110,000 in nominal terms, or $60,000 at present value. Unit lifecycle costs for a newly-manufactured airplane delivered to a non-ATA carrier would increase by approximately $179,000, or $100,000 at present value.

Based on these estimates, the FAA does not consider the effects of this rule sufficient to trigger the requirements of the Unfunded Mandates Reform Act or to be a ''major'' rulemaking for the purposes of the Congressional review requirements under the Small Business Regulatory Enforcement Fairness Act. The FAA requests comments on its cost estimates with respect to those statutes.

Benefits Estimates

The benefits of detection and suppression systems depend on the degree to which the systems enable an airplane to avert a catastrophic accident in the event a fire occurs in a cargo or baggage compartment. Measuring this benefit, however, is problematic since it is determined not only by the relative fire-protection capabilities of Class C and Class D compartments, but on the probability that a fire will occur. Amendments to regulations—e.g. restrictions on the transportation of hazardous materials and more stringent burn-through requirements for compartment liners—would also impinge on this analysis. (It should be noted, however, that the improved standards for liners apply equally to both Class C and Class D compartments.)

The expected (future) rate of fires occurring in cargo or baggage compartments is estimated using historical accident and incident data from the National Transportation Safety Board (NTSB), FAA, insurance underwriters, and foreign aviation authorities. These records show that during the 20-year period between 1977 and 1996, there were 19 fires reported as having occurred worldwide in Class D and Class C compartments involving transport category airplanes while used in commercial service. During this period, air-carriers worldwide (excluding domestic operations within the former Soviet Union, the Russian Federation, and the Commonwealth of Independent States) accumulated approximately 224.5 million departures in transport category airplanes having Class C or Class D compartments. The event rate for fires occurring in Class D and Class C compartments is, therefore, approximately 0.085 per million departures.

It must be noted that the event rate of 0.085 per million departures is based, for the most part, on service experience that occurred when consumer aerosol cans contained inert propellants. As described above under **Background**, the current use of highly-flammable propellants in consumer aerosol cans presents an additional hazard.

The available evidence shows that in the majority of incidents, Class D compartments successfully contain fires. Of the inflight fires occurring in Class D compartments, only four were reported to have resulted in casualties or substantial damage to the airplane. A precise estimate of the likelihood of injury or airplane damage in the event a fire occurs in a Class D compartment is difficult to compute, however, owing to the limitations of accident and incident information. In many cases, necessary details had to be estimated. Where the post-event condition of the airplane is unknown, it is assumed that there was no damage. Where fatalities and injuries are unreported, it is assumed that there were no casualties. Where necessary, the number of occupants is estimated by applying the average load factor for that year by the average passenger capacity for a given airplane model.

The expected reduction in the proportion of occupants fatally injured in an accident resulting from a fire occurring in a Class D compartment is estimated as the ratio of fatalities to total occupants. Of the 1,411 individuals involved in the accidents cited above, 523 were fatally injured, representing approximately 37% of occupants. In the case of all-cargo airplanes, the expected life-saving benefit is assumed to be zero.

Applying the risk reduction estimate above to airplane-specific departure, capacity, and load factor information (and using the Department of Transportation's official value of a fatality averted—$2.7 million), FAA estimates that the rule would yield benefits of approximately $458 million over the life of the affected in-service fleet (or approximately $228 million at present value).

For a representative newly-manufactured airplane delivered to an ATA carrier, the FAA estimates that the rule would yield a life-cycle benefit of $280,000 (or $94,000 at present value). For a newly-manufactured airplane delivered to a non-ATA carrier, FAA estimates that the rule would yield a life-cycle benefit of $340,000 (or $115,000 at present value).

In view of the above, the FAA finds that the benefits of the rule would outweigh its costs. Specifically, for the affected in-service fleet, discounted benefits would exceed costs by a factor of approximately 1.18. For affected newly-manufactured airplanes delivered to ATA carriers, discounted benefits would exceed costs by a factor of 1.57. For newly-manufactured airplanes delivered to non-ATA carriers, discounted benefits would exceed costs by a factor of 1.15.

This regulatory evaluation is based on a number of assumptions involving past operational experience. The public is, therefore, specifically invited to comment on the validity of those assumptions. In particular, the benefits are estimated using a worldwide accident rate including the Saudi Arabian Lockheed L–1011 and Gulf Air Boeing 737 accidents noted above. Do those accidents involve any factors not considered by the FAA that would warrant an alternative analysis based only on operational experience involving U.S. air carriers?

Apart from past occurrences and the likelihood of their recurrence, the FAA believes that changing circumstances may introduce new hazards that would not be predicted by previous service experience. For example, as discussed above, there is now a high percentage of checked luggage containing aerosol cans with flammable propellants. Although no fatalities are known to have occurred as a result of an aerosol can exploding in a Class D compartment, it is apparent from tests that such items do pose risks that did not exist when aerosol cans contained only nonflammable propellants. Are there alternative approaches the FAA should consider in risk assessment for this and future rulemaking?

The Department of Transportation is also preparing rulemaking that would place additional restrictions on the transport of hazardous materials (oxygen generators including empty canisters and oxidizers) by air carriers (61 FR 68955, December 30, 1996). The benefits of these restrictions would overlap part of the benefits associated with this rulemaking, i.e. the elimination of Class D cargo compartments and their conversion to the equivalent of Class C or Class E compartments. As a result of a comprehensive review of cargo fire safety options, however, the FAA determines that both initiatives would yield benefits that justify their costs. Considering both initiatives together, total combined discounted costs are approximately equal to the combined benefits for airplanes in service (assuming conservatively that benefits are only associated with prevented inflight fires).

The FAA believes there are also non-quantifiable benefits contained in this proposal, including increased consumer confidence in the aviation industry due to the installation of detection and suppression systems. The White House Commission on Aviation Safety and Security recommended that the FAA include these non-quantifiable benefits in evaluating safety proposals. The FAA took these non-quantifiable benefits into consideration while formulating the proposal.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules which may have ''a significant economic impact on a substantial number of small entities.'' FAA Order 2100.14A, *Regulatory Flexibility Criteria and Guidance*, specifies small entity size and cost thresholds by Standard Industrial Classification (SIC). Entities potentially affected by the rule include manufacturers of transport category airplanes (SIC 3721), and operators of airplanes for hire (SIC 4511).

There are no manufacturers of transport category airplanes that meet the SIC 3721 size threshold for small entities. On the basis of Aircraft Registry data, however, FAA estimates that 49 air carriers meet the size criterion for SIC 4511.

The definition of ''significant economic impact'' varies by operator type. For ''type 1'' scheduled carriers, whose fleets consist of airplanes having a seating capacity of more than 60 passengers, the threshold is $123,000. For ''type 2'' carriers—which include scheduled carriers operating airplanes seating 60 or fewer passengers (e.g., commuter airlines)—the threshold is $69,000. For ''type 3'' carriers —including charter airlines and other passenger and cargo carriers providing unscheduled service—the threshold is $5,000. Annualized costs per airplane (in 1996 dollars) are computed by amortizing the total discounted costs for each airplane over its expected remaining service life. Annualized costs per air carrier—obtained by summing the per airplane annualized estimates—are then compared to the thresholds above.

FAA Order 2100.14A defines a ''substantial number of small entities'' as ''a number which is not less than eleven and which is more than one-third of the small entities subject to a proposed or existing rule * * *.'' This analysis finds that the proposed rulemaking would significantly affect 31 of the 49 small entities identified above—clearly, 31 is both greater than 11 and greater than one-third of the affected small entities. The FAA, therefore, determines that the proposed rule would have a significant economic impact on a substantial number of small entities.

In light of the economic impact of the proposal, FAA convened a panel of experts—including representatives from FAA and the Department of Transportation's Research and Special Programs Administration (RSPA)—to evaluate the relative advantages and disadvantages of various fire prevention and protection options. These options ranged from relatively low-cost, purely preventative approaches (e.g. banning certain types of material from air transport) to mitigative approaches (e.g. fire detection and suppression systems). Panel participants specifically considered the degree to which one approach would dilute the benefits of other approaches.

At the request of the FAA Administrator, consideration was also given to alternative fire detection and suppression system installation options (and various logical permutations of these options) including: (1) retrofit of detection systems only, (2) a requirement for detection systems on newly manufactured airplanes only, (3) a requirement for detection and suppression systems for extended overwater operations only, (4) retrofit of detection and suppression systems, (5) a requirement for detection and suppression systems on newly manufactured airplanes only.

On the basis of this comprehensive analysis of policy options, the FAA concludes that no alternative to full detection and, for passenger-carrying airplanes, suppression system would achieve equivalent safety benefits while at the same time reducing the cost impact on small entities.

It is possible, however, that extending the deadline by which small entities must complete these retrofits could provide some cost relief. The FAA's preliminary analysis suggests that extending the compliance period is not justified for several reasons. First, the requirement as proposed is modest. A small operator would be required to convert up to nine airplanes (the small-entity threshold) within three years. Second, the FAA expects that the potential costs reduction would be very small. It is true that extending the deadline could permit a small operator to retire some airplanes without conversion; however, assuming the operator maintains the same capacity, the retired airplanes would have to be replaced either through purchase or lease. The replacement airplanes would have to incorporate detection and, in the case of passenger-carrying airplanes, suppression. Theoretically, then, the cost savings would equal the return on capital (required to finance the retrofits) that would accrue during the short time that operators could delay conversions. Finally, this small savings must be weighed against the increased length of time that airplane occupants would be exposed to greater fire hazards. For example, when a fire occurs in a Class D compartment, it is irrelevant, insofar as the potential safety hazards are concerned, whether the airplane is operated by a ''small entity'' or any other entity that is not ''small.''

Nevertheless, the FAA invites comments on the impacts of cost and benefits associated with extending the compliance time for small entities.

International Trade Impact Assessment

Recognizing the regulations that are nominally domestic in nature often affect international trade, the Office of Management and Budget directs Federal Agencies to assess whether or not a rule or regulation would affect any trade-sensitive activity.

The proposed rule could potentially affect international trade by burdening domestic manufacturers and air carriers with requirements that are not applicable to their foreign competitors, and thereby increase the relative price of domestically-produced goods and air travel provided by domestic operators.

The FAA holds, however, that the proposed rule would have a negligible impact on international trade. First, the rule would not establish either a competitive advantage or disadvantage for domestic airframe manufacturers—both domestic and foreign firms would be unable to sell newly-manufactured transport category airplanes with Class D cargo or baggage compartments in the U.S. since they would be ineligible for air carrier service in this country after December 31, 2000. Second, as noted above, several major U.S. air carriers have already voluntarily installed detection or detection-suppression systems in airplanes for which there is no existing requirements to do so. This is also true for at least one major foreign airline. Third, the proposed rule would primarily affect smaller narrow-body airplanes that are used on domestic routes. Foreign carriers, of course, are not permitted to compete on domestic routes. Most airplanes used in international service are larger models which are already equipped with cargo or baggage compartment fire-detection and suppression systems. Finally, foreign civil aviation authorities have indicated to the FAA that they expect to adopt similar fire-detection and suppression requirements.

Federalism Implications

The regulations proposed herein 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 or responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have significant federalism implications to warrant the preparation of a Federalism Assessment.

International Compatibility

The FAA has reviewed the corresponding International Civil Aviation Organization regulations, where they exist, and has identified no differences in these proposed amendments and the foreign regulations. The FAA has also reviewed the Joint Airworthiness Authority Regulations and has discussed similarities and differences in these proposed amendments and the foreign regulations.

Paperwork Reduction Act

This Notice proposes reporting requirements, which are subject to OMB approval, as required by the Paperwork Reduction Act of 1995. An information collection control number will be assigned for them if and when OMB approval is given. The costs and benefits of these proposed collection requirements are set forth in the section entitled ''Cost Estimates,'' above.

Regulations Affecting Interstate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in Title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this proposed rule would apply to the operation of most transport-category airplanes under parts 121 and 135 of Title 14, it could, if adopted, affect intrastate aviation in Alaska. The FAA, therefore, specifically requests comments on whether there is justification for applying the proposed rule differently to intrastate operations in Alaska.

Conclusion

Because the proposed changes to upgrade the fire safety standards for cargo or baggage compartments are not expected to result in a substantial economic cost, the FAA has determined that this proposed legislation would not be major under Executive Order 12866. Because this is an issue which has prompted a great deal of public concern, the FAA has determined that this action is significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the regulatory evaluation prepared for this project may be examined in the Rules Docket or obtained from the person identified under the caption **FOR FURTHER INFORMATION CONTACT.**

List of Subjects

14 CFR Part 25

Aircraft, Aviation safety.

14 CFR Part 121

Aviation safety, Air carriers, Air transportation, Aircraft, Airplanes, Transportation.

14 CFR Part 135

Aviation safety, Aircraft, Airplanes.

The Proposed Amendments

Accordingly, the FAA proposes to amend the Federal Aviation Regulations (FAR) 14 CFR parts 25, 121, and 135 as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 is revised to read as follows:

Authority: 49 USC 106(g) 40113, 44701, 44702 and 44704.

2. Section 25.855(c) is revised to read as follows:

§ 25.855 Cargo or baggage compartments.

* * * * *

(c) Ceiling and sidewall liner panels of Class C compartments must meet the test requirements of part III or appendix F of this part or other approved equivalent methods.

* * * * *

§ 25.857 [Amended]

3. Section 25.857 is amended by removing and reserving paragraph (d).

4. Section 25.858 is amended by revising the section heading and the introductory paragraph to read as follows:

§ 25.858 Cargo or baggage compartment smoke or fire detection systems.

If certification with cargo or baggage compartment smoke or fire detection provisions is requested, the following must be met for each cargo or baggage compartment with those provisions:

* * * * *

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG AND SUPPLEMENTAL OPERATIONS

5. The authority citation for part 121 continues to read as follows:

Authority: 49 USC 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

6. Section 121.314 is revised to read as follows:

§ 121.314 Cargo and baggage compartments.

For each transport category airplane type certificated after January 1, 1958:

(a) Each Class C or Class D compartment, as defined in § 25.857 of this Chapter in effect on June 16, 1986 (see Appendix L to this part), that is greater than 200 cubic feet in volume must have ceiling and sidewall liner panels which are constructed of:

(1) Glass fiber reinforced resin;

(2) Materials which meet the test requirements of part 25, appendix F part III of this chapter; or

(3) In the case of liner installations approved prior to March 20, 1989, aluminum.

(b) For compliance with paragraph (a) of this section, the term ''liner'' includes any design feature, such as a joint or fastener, which would affect the capability of the liner to safely contain a fire.

(c) After [insert date three years after the effective date of the final rule], each Class D compartment, regardless of volume, must meet the standards of §§ 25.857(c) and 25.858 of this Chapter for a Class C compartment unless the operation is an all-cargo operation in which case each Class D compartment may meet the standards in § 25.857(e) for a Class E compartment.

(d) Reports of compliance with paragraph (c) of this section. Each certificate holder must submit written reports to the FAA that contain information about the airplanes being operated by that certificate holder and the holder's compliance with paragraph (c) of this section. A written report must be submitted to the Certificate-holding District Office by July 1, 1998, and at each three-month interval thereafter, that contains:

(1) The serial number of each airplane in which all Class D compartments have been retrofitted to meet the fire detection and suppression requirements for Class C or the fire detection requirements for Class E; and

(2) The serial number of each airplane that has at least one Class D compartment that has not been retrofitted.

7. Appendix L to part 121 is amended by adding to the table an entry for § 121.314(a) to read as follows:

Appendix L to Part 121—Type Certification Regulations Made Previously Effective

* * * * *

Part 121 section	Applicable aircraft	Provisions: CFR/FR references
*	* *	* *
§ 121.314 (a).	Transport category airplanes type certificated after January 1, 1958.	Class C or D cargo or baggage compartment definition, 14 CFR 25.857 in effect on June 16, 1986, 14 CFR parts 1 to 59, revised as of Jan. 1, 1997, and amended by Amendment 25–60, 51 FR 18243, May 16, 1986.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

8. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g) 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

9. Section 135.169 is amended by revising paragraph (d) introductory text and paragraph (d)(1); and adding new paragraphs (d)(3) and (e) to read as follows:

§ 135.169 Additional airworthiness requirements.

* * * * *

(d) Cargo or baggage compartments installed in each transport category airplane type certificated after January 1, 1958:

(1) Each Class C or D compartment, as defined in § 25.857 of part 25 of this chapter in effect on June 16, 1986 (see appendix F to this part), greater than 200 cubic feet in volume, must have ceiling and sidewall panels which are constructed of:

* * * * *

(3) After [insert a date three years after the effective date of the final rule], each Class D compartment, regardless of volume, must meet the standards of §§ 25.857(c) and 25.858 of this chapter for a Class C compartment unless the operation is an all-cargo operation in which case each Class D compartment may meet the standards in § 25.857(e) for a Class E compartment.

(e) Reports of compliance with paragraph (d)(3) of this section. Each certificate holder must submit written reports to the FAA that contain information about the airplanes being operated by that certificate holder and the holder's compliance with paragraph (d)(3) of this section. A written report must be submitted to the Certificate-holding District Office by July 1, 1998, and at each three-month interval thereafter, that contains:

(1) The serial number of each airplane in which all Class D compartments have been retrofitted to meet the fire detection and suppression requirements for Class C or the fire detection requirements for Class E; and

(2) The serial number of each airplane that has at least one Class D compartments that has not been retrofitted.

10. A new Appendix F is added to part 135 to read as follows:

Appendix F to Part 135—Type Certification Regulations Made Previously Effective

Appendix F lists regulations in this part that require compliance with standards contained in superseded type certification regulations that continue to apply to certain transport category airplanes. The tables set out citations to current CFR section, applicable aircraft, superseded type certification regulation and applicable time periods, and the CFR edition and **Federal Register** documents where the regulation having prior effect is found. Copies of all superseded regulations may be obtained at the Federal Aviation Administration Law Library, Room 924, 800 Independence Avenue SW, Washington, DC.

Part 135 section	Applicable aircraft	Provisions: CFR/FR references
§ 135.169 (d).	Transport category airplanes type-certified after January 1, 1958.	Class C or D cargo or baggage compartment definition. 14 CFR 25.857 in effect on June 16, 1986, 14 CFR parts 1 to 59, revised as of Jan. 1, 1997, and amended by Amendment 25–60, 51 FR 18243, May 16, 1986.

Issued in Washington, D.C. on June 9, 1997.

James C. Jones,

Acting Director, Aircraft Certification Service.

[FR Doc. 97–15457 Filed 6–10–97; 1:18 pm]

BILLING CODE 4910–13–M

federal register

Friday
June 13, 1997

Part IV

Federal Retirement Thrift Investment Board

5 CFR Part 1651

Death Benefits; Final Rule

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1651

Death Benefits

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing final regulations governing death benefit payments from the Thrift Savings Plan (TSP). These regulations set forth the Board's policies and procedures for processing death benefit claims and death benefit payments under 5 U.S.C. 8433(e) and 8424(d).

DATES: This final rule is effective June 13, 1997.

FOR FURTHER INFORMATION CONTACT: John J. O'Meara (202) 942-1660.

SUPPLEMENTARY INFORMATION: The Board administers the TSP which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Pub. L. 99–335, 100 Stat. 514. The provisions governing the TSP are codified primarily in subchapters III and VII of Chapter 84 of Title 5, United States Code (1994). The TSP is a tax-deferred retirement savings plan for Federal employees that is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code. Sums in a participant's TSP account are held in trust for that participant. 5 U.S.C. 8437(g).

The disbursement of death benefits from the TSP is governed by the provisions of 5 U.S.C. 8433(e) and 8424(d). Under section 8433(e), if a TSP participant dies before he or she has completed a withdrawal election, the account is to be disbursed in accordance with the order of precedence set forth at section 8424(d).

These regulations set forth the Board's policies and procedures for processing death benefit claims and death benefit payments under 5 U.S.C. 8433(e) and 8424(d).

These regulations were published in proposed form on March 27, 1997 (62 FR 14653). No comments were received.

Section by Section Analysis

Section 1651.1 contains definitions of terms throughout these regulations. A participant's domicile is important for a determination of beneficiary under § 1651.5 and § 1651.9. Normally, the Board would look to the participant's address at the time of death to identify the participant's domicile; however, this practice presents problems in the case of participants who are living overseas. In order to permit the Board to look to the law of the United States in all cases, the Board will use the state in which the participant is liable for state income taxes. This information should be generally available from the participant's agency.

Section 1651.2(a) sets forth the order of precedence as found in 5 U.S.C. 8424(d). Under the statutory order of precedence, payment is made first to the beneficiary or beneficiaries designated by the participant on a properly completed and filed designation of beneficiary form. Form TSP–3, Designation of Beneficiary, has been developed by the Board for that purpose. If the participant has elected to withdraw his or her account in the form of certain types of annuities (discussed below), the designation of beneficiary or beneficiaries made on Form TSP–11-B, Beneficiary Designation for a TSP Annuity, will supersede the statutory order of precedence. If the participant does not designate a beneficiary, payment will be made as provided by the remainder of 5 U.S.C. 8424(d). Each statutory category of potential beneficiaries is addressed in a separate section of these regulations.

Section 1651.2(b) addresses the payment of a death benefit after the participant has completed a withdrawal election. Different rules apply depending on the type of withdrawal election and, if applicable, the type of annuity chosen. Paragraph (b)(1) addresses the situation in which the participant dies after having completed an election to withdraw his or her account in the form of a single payment or monthly payments but before payment has been made. The account will be paid in accordance with the statutory order of precedence, because the election made by the participant provides no indication of his or her intended beneficiaries.

Paragraphs (b)(2) through (b)(6) address situations in which the participant dies after having completed an election to withdraw his or her account in the form of certain types of annuities but before the annuity has been purchased. Under paragraph (b)(2), if the participant dies after having completed an election to withdraw his or her account in the form of a joint life annuity but before the annuity has been purchased, the account will be paid as a single payment to the joint life annuitant. In this situation, the participant's election makes it clear that the joint annuitant should be the beneficiary upon the participant's death.

Under paragraph (b)(3), if both the participant and the joint annuitant die after the participant has completed an election to withdraw his or her account in the form of a joint life annuity but before the annuity has been purchased, and the annuity election included a cash refund, the account will be paid proportionally to the beneficiary or beneficiaries designated on Form TSP–11–B, Beneficiary Designation for a TSP Annuity. This result gives effect to the participant's wishes as reflected by his or her annuity election. If the annuity election did not include a cash refund, under paragraph (b)(4), the account will be paid in accordance with the statutory order of precedence.

Similarly, under paragraph (b)(5), if a participant dies after having completed an election to withdraw his or her account in the form of a single life annuity that includes either a cash refund or 10-year certain feature, but before the annuity has been purchased, the account will be paid proportionally to the beneficiary or beneficiaries designated on Form TSP–11–B. If the annuity does not include either a cash refund or 10-year certain feature, under paragraph (b)(6), the account will be paid in accordance with the statutory order of precedence.

Paragraph (b)(7) addresses the situation in which the participant dies after the annuity has been purchased. In that situation, the account will be paid in accordance with the annuity method selected. Once the Board purchases the annuity elected by the participant, responsibility for payment of the benefits shifts to the annuity provider.

Section 1651.3 sets forth the requirements for a valid designation of beneficiary on a Form TSP–3. In order to designate a beneficiary of a TSP account, a participant must complete and send to the TSP record keeper a Form TSP–3, Designation of Beneficiary, or Form TSP–11–B, Beneficiary Designation for a TSP Annuity. Form TSP–11–B must be used to designate a beneficiary when a participant elects to withdraw his or her account in the form of a joint annuity with a cash refund feature or a single life annuity with a cash refund feature or a 10 year certain feature.

A will may not be used to designate a beneficiary of a TSP account. The Board will also not honor a designation of beneficiary that is set forth in a court decree of divorce, annulment, or legal separation or in any court order or court-approved property settlement agreement incident to such a decree that is issued under section 8435(c)(2) of title 5 of the United States Code. Such designation is considered to be an award of a future interest and, to the extent that a court order awards an amount to be paid upon the occurrence of a future specified event, the order is not a qualifying retirement benefits court order pursuant to 5 CFR 1653.2(c).

All Forms TSP–3 signed on or after January 1, 1995, must be received by the TSP record keeper on or before the participant's date of death. This is a change in the procedures for processing Forms TSP–3. Before January 1, 1995, active employees were required to submit Forms TSP–3 to their employing agency, which, in turn, forwarded the forms to the TSP record keeper when a participant died in service or separated from service. Because of the change in the processing of Forms TSP–3, the Board has instructed all agencies to send to the TSP record keeper all Forms TSP–3 that are in employees' personnel files. Any forms signed before January 1, 1995, which were received by the agencies before the participant's death will be evaluated by the record keeper to determine whether they are valid, despite the fact that they were received by the agencies. Forms that the record keeper finds invalid will be returned to the participant. A valid Form TSP–3 will remain in effect until it is canceled or changed as described in § 1651.4.

In addition to being properly filed, a Form TSP–3 must be properly completed in order to be valid. This means that the form must be signed by the participant and two witnesses. The individuals signing as witnesses must actually observe the participant signing the form, or they must observe the participant acknowledge his or her signature on the Form TSP–3. Witnesses should not be named as beneficiaries. A form that contains a signature for a witness who is also a named beneficiary is valid; however, the witness beneficiary will not be entitled to receive his or her designated share of the account.

Section 1651.4 sets forth the requirements for changing or canceling a designation of beneficiary. In order to change a designation, the participant must complete and file another Form TSP–3. The Form TSP–3 containing the changes must be valid and must be received by the TSP record keeper on or before the date of death of the participant. In order to cancel a prior designation, the participant may complete and send another Form TSP–3 with a notation that all prior designations are canceled. Alternatively, the participant may send a letter, signed and dated by the participant and witnessed in the same manner as a Form TSP–3, stating that prior designations are canceled. A letter canceling a prior designation must also be received by the TSP record keeper on or before the participant's date of death.

A participant may make, change, or cancel a designation of beneficiary at any time and without the knowledge or consent of the participant's spouse or any current or prior designated beneficiaries. An intervening legal separation, divorce, or annulment of the marriage of the participant does not automatically cancel a Form TSP–3 naming the spouse or former spouse or anyone else as a beneficiary.

Sections 1651.5 through 1651.9 further describe the potential beneficiaries under the statutory order of precedence. Section 1651.5 sets forth the rules for payment to the participant's spouse. It explains that the widow or widower of the participant is the person to whom the participant is married on the date of death. Whether the participant was married will be determined in accordance with applicable state laws, based upon the participant's domicile at the time of death. A person is considered to be married even if the parties are separated. The Board will make a payment to an individual who claims to be the common law spouse of a participant only if the requirements for a common law marriage under the applicable state law have been met.

Section 1651.6 sets forth the rules for the death benefit payment of a participant's TSP account to the participant's children or the descendants of deceased children. A child includes a natural or adopted child. Whether a child is the natural child of the participant will be determined in accordance with applicable state law. State law will not apply, however, in cases involving a natural child of a TSP participant who was adopted by someone other than the spouse of the participant during the lifetime of the participant. In those cases, these regulations establish the general rule that the child will not be treated as a child of the participant under this section.

Section 1651.7 sets forth the rules for the death benefit payment of a participant's TSP account to the participant's parents. A step-parent is not considered a parent unless the step-parent adopted the participant.

Payment to the duly appointed executor or administrator of the participant's estate is addressed in § 1651.8. A duly appointed executor or administrator of a participant's estate includes any person appointed by a court to act in that capacity. Some states have established statutory procedures for transferring the assets of estates below a specified value. The Board will accept a person authorized under those procedures to handle the affairs of the deceased participant's estate as the ''duly appointed executor or administrator'' of the participant's estate. This policy recognizes that many states do not require, and may not even permit, estates below a certain value to be probated formally through the state court system. However, documentation establishing that the applicant is qualified under the relevant state's small estate procedures must be submitted to the TSP record keeper.

If the participant is not survived by a spouse, child, or parent, and an executor or administrator is not appointed under state court or statutory procedures, § 1651.9 provides that payment will be made to the participant's next of kin as determined under the state law of the participant's domicile at the time of death.

Under 5 U.S.C. 8424(d), benefits will be paid to the individual or individuals ''surviving the employee or Member and alive at the date title to the payment arises.'' The Board interprets this phrase to mean that the entitlement to a death benefit payment arises at the time of the participant's death and, therefore, a beneficiary must be alive at the time of the participant's death in order to receive a death benefit. Accordingly, under § 1651.10(a), if a beneficiary designated on a Form TSP–3 or Form TSP–11–B dies before the participant, the beneficiary's share will be paid to the other living designated beneficiary(ies), if any, proportionally. For example, if the deceased beneficiary was designated to receive 50% of the account and the first living beneficiary was to receive 20% of the account and the second remaining beneficiary was to receive 30% of the account, the first living beneficiary would receive 40% of the deceased beneficiary's share of the account (20% + (20/50 × 50%)) and the second remaining beneficiary would receive 60% of the deceased beneficiary's share of the account (30% + (30/50 × 50%)). If there are no living designated beneficiaries, the account will be paid to the person(s) determined to be the beneficiary(ies) under the statutory order of precedence.

Under § 1651.10(b), if a trust or other entity that has been designated as the beneficiary of the participant's account does not exist on the date of death of the participant or if it is not created by will or other document to take effect upon the participant's death, the account will be paid under the statutory order of precedence.

Under § 1651.10(c), if a beneficiary by virtue of the order of precedence dies before the participant, the beneficiary's share will be paid equally to other living beneficiary(ies) bearing the same relationship to the participant as the deceased beneficiary, unless the deceased beneficiary is a child of the beneficiary. In that case, the descendants of the deceased child would receive the deceased child's share of the account. If there are no other beneficiaries bearing the same relationship or there are no descendants of a deceased child, the deceased beneficiary's share will be paid to the person(s) next in line, according to the order of precedence.

Because a beneficiary's interest in the death benefit is created upon the death of the participant, § 1651.10(d) provides that if the beneficiary dies after the participant but before payment is made, the beneficiary's share will be paid to the beneficiary's estate.

Consistent with the requirement that the beneficiary survive the participant, § 1651.11 provides that if the participant and the beneficiary die simultaneously, the Board considers the beneficiary to have predeceased the participant and the account will be paid in the manner set forth in § 1651.10. Death is considered to be simultaneous if the death certificate lists the same hour and minute for the time of death. In common disaster situations, such as an automobile or airplane crash, where a precise time of death cannot be established, it will be presumed that the beneficiary(ies) and the participant died simultaneously, unless the death certificate otherwise indicates.

Section 1651.12 reflects the Board's policy of not paying the beneficiary of a TSP participant if the beneficiary is convicted of a crime in connection with the participant's death which would preclude the beneficiary from inheriting under state law. In this regard, the Board follows strong public policy which prohibits a person from profiting from his or her wrongdoing. The Board will follow the law of the state in which the participant was domiciled at the time of death as that law is set forth in a civil court judgment or, in the absence of such a judgment, will apply state law to the facts of the case after all criminal appeals have been exhausted. The civil court judgment must be one that, under the law of the state, would protect the Board from double liability or payment. The Board will treat that beneficiary as if he or she had predeceased the TSP participant and will determine the beneficiary(ies) of the account according to the procedures described in § 1651.10. A plea of guilty to such a crime constitutes a conviction for purposes of these regulations.

Section 1651.13 sets forth the procedure for applying for a death benefit payment. In order for a death benefit payment to be processed, the TSP record keeper must receive Form TSP–17, Application for Account Balance of Deceased Participant, with a certified copy of the participant's death certificate. A copy of a certified death certificate contains a copy of the stamp or seal of the state agency that is responsible for issuing death certificates. Form TSP–17 may be submitted by any potential beneficiary or any interested party; however, submission of an application does not entitle the applicant to benefits.

Section 1651.14 explains how death benefit payments are made. Before a payment can be made, each beneficiary will be sent a notice of pending payment. That notice will contain information regarding the portion of the account that will be paid to the beneficiary and will provide information regarding the Federal tax consequences of the payment. Payment is made by separate check to each beneficiary. If payment is to the widow or widower of the participant, she or he may transfer all or a portion of the payment to an Individual Retirement Arrangement (IRA). The TSP record keeper will provide the widow or widower with a Form TSP–13–S, Spouse Election to Transfer to IRA or Other Eligible Retirement Plan, to request such a transfer. For purposes of transferring the account, the TSP record keeper will not accept forms from other institutions. If payment is to a minor child, the check will be made payable directly to the child. If payment is to the executor or administrator of an estate, the check will be made payable to the estate of the deceased participant. A taxpayer identification number (TIN) must be provided for any estate, regardless of whether the estate is required to pay taxes. This is necessary to allow the Board to fulfill its statutory reporting obligation to the Internal Revenue Service. If payment is to a trust, the check will be made payable to the trustee. A taxpayer identification number (TIN) must be provided for the trust.

Certain types of issues relating to the processing of death cases will be decided by the Board as set forth in § 1651.15. Those cases may involve conflicting claims to a participant's account, such as when one applicant claims that the participant was married at the time of death and another applicant claims that the participant was not married at the time of death. Other cases may involve the accuracy of the Form TSP–17 or the validity of Forms TSP–3, TSP–17, TSP–11–B, or a letter canceling a designation. The Board will also review challenges made to the legal status of a purported beneficiary. The Board may require that issues regarding paternity, the validity of a participant's marriage on the date of death, or other matters that traditionally fall under state law, be resolved by a state court before the Board issues payment.

In some cases, the beneficiary of the account cannot be readily located, such as when the Board does not have a correct address for an estranged spouse or parent. These cases include both situations in which the name of the beneficiary is known, but his or her whereabouts are not, and situations in which the name of the beneficiary is not known. Section 1651.16 sets forth the process that will be followed when it appears that a beneficiary is missing.

The TSP record keeper will make reasonable efforts to locate the missing beneficiary or to learn the name and location of a missing beneficiary. If the beneficiary has not been located and at least one year has passed since the date of death of the participant, that beneficiary will be treated as having predeceased the participant. However, if a potential beneficiary does not cooperate in the TSP record keeper's efforts to locate a missing beneficiary(ies), the missing beneficiary's share of the account will be treated as having been abandoned and it will revert to the TSP. In such circumstances, the missing beneficiary(ies) may reclaim the abandoned share of the account at a later date by submitting a Form TSP–17 and providing sufficient proof to establish his or her relationship to the participant. However, earnings will not be credited to any funds that have been abandoned.

If the total number of beneficiaries and their identities are known and one or more, but not all, appear to be missing, payment of part of the participant's account may be made to the beneficiary(ies) whose location is known. If the Board is unable to locate any beneficiaries of the account, the account will be abandoned and the funds will be forfeited to the TSP. If a beneficiary is located at any time after the funds are forfeited to the TSP, the beneficiary may claim the entire account by submitting a Form TSP–17 and providing sufficient proof to establish his or her identity and relationship to the participant. However, earnings will not be credited to any funds that have been abandoned.

The beneficiary of a TSP account may disclaim his or her right to receive the benefit in accordance with § 1651.17. A disclaimer is irrevocable. The disclaimant cannot direct to whom the disclaimant's portion of the participant's account should be paid. The disclaimant must disclaim the entire benefit, not a portion. The disclaimant will be treated as having predeceased the participant for purposes of determining to whom the disclaimant's portion of the account is to be paid.

Section 1651.18 provides that payment to a beneficiary made in accordance with these regulations bars any claim by another person.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administration Procedure Act (APA), as amended by the Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121, title II, 110 Stat. 847, 857–875 (5 U.S.C. 801(a)(1)(A)), the Board submitted 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 before the publication of this rule in today's **Federal Register**. This rule is not a major rule as defined in section 804(2) of the APA as amended (5 U.S.C. 804(2)).

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, section 201, Pub. L. 104–4, 109 Stat. 48, 64, the effect of this regulation on State, local, and tribal governments and on the private sector has been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by any State, local, and tribal governments in the aggregate or by the private sector. Therefore, a statement under section 202, 109 Stat. 48, 64–65, is not required.

List of Subjects in 5 CFR Part 1651

Employee benefit plans, Government employees, Pensions, Retirement.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons set out in the preamble, the Federal Retirement Thrift Investment Board amends Chapter VI of title 5 of the Code of Federal Regulations by adding a new Part 1651 to read as follows:

PART 1651—DEATH BENEFITS

Sec.

Authority: 5 U.S.C. 8424(d), 8433(e), 8435(c)(2), 8474(b)(5) and 8474(c)(1).

§ 1651.1 Definitions.

Terms used in this part shall have the following meanings:

Beneficiary means the person or legal entity who is entitled to receive a death benefit from a deceased participant's TSP account;

Board means the Federal Retirement Thrift Investment Board;

Death benefit means all or a share of the deceased participant's TSP account at the time of payment;

Domicile means the participant's place of residence for purposes of state income tax liability;

Order of precedence means the order in which a death benefit will be paid, as specified in 5 U.S.C. 8424(d);

Participant means any person with an account in the Thrift Savings Fund;

Thrift Savings Fund means the Fund described in 5 U.S.C. 8437;

Thrift Savings Plan or *TSP* means the Federal Retirement Thrift Savings Plan established by the Federal Employees' Retirement System Act of 1986, codified in pertinent part at 5 U.S.C. 8431 *et seq.*;

TSP record keeper means the entity that is engaged by the Board to perform record keeping service for the Thrift Savings Plan. As of June 13, 1997, the TSP record keeper is the National Finance Center, United States Department of Agriculture, whose mailing address is National Finance Center, TSP Service Office, P.O. Box 61135, New Orleans, Louisiana 70161–1135;

Withdrawal election means a request for the payment of a participant's vested account balance filed under 5 CFR 1650, subpart B.

§ 1651.2 Entitlement to benefits.

(a) *Death benefit payments made before the participant has completed a withdrawal election.* If a participant dies before completing a withdrawal election, the account will be paid to the individual or individuals surviving the participant in the following order of precedence:

(1) To the beneficiary or beneficiaries designated by the participant on a properly completed and filed Form TSP–3, Designation of Beneficiary, in accordance with § 1651.3;

(2) If there is no designated beneficiary, to the widow or widower of the participant in accordance with § 1651.5;

(3) If none of the above in paragraphs (a)(1) and (a)(2) of this section, to the child or children of the participant and descendants of deceased children by representation in accordance with § 1651.6;

(4) If none of the above in paragraphs (a)(1) through (a)(3) of this section, to the parents of the participant or the surviving one of them in accordance with § 1651.7;

(5) If none of the above in paragraphs (a)(1) through(a)(4) of this section, to the duly appointed executor or administrator of the estate of the participant in accordance with § 1651.8;

(6) If none of the above in paragraphs (a)(1) through (a)(5) of this section, to the next of kin of the participant who are entitled under the laws of the state of the participant's domicile at the date of the participant's death in accordance with § 1651.9.

(b) *Death benefit payments made after the participant has completed a withdrawal election.* (1) The death benefit will be paid in accordance with the order of precedence as set forth in paragraph (a) of this section if the Board learns that the participant has died after having completed an election to withdraw his or her TSP account balance in the form of a single payment or monthly payments (whether or not the participant has requested that all or part of such payments be transferred to an eligible retirement plan), but the account balance has not yet been paid out in accordance with such election.

(2) The death benefit will be paid as a single payment to the joint life annuitant if the Board learns that the participant has died after having completed an election to withdraw his or her TSP account balance in the form of a joint life annuity, but the annuity has not yet been purchased.

(3) The death benefit will be paid pro rata as a single payment to the beneficiary(ies) designated on Form TSP–11–B, Beneficiary Designation for a TSP Annuity, if both the participant and the joint annuitant die after the par ticipant has completed an election to withdraw his or her TSP account balance in the form of a joint life annuity that includes a cash refund, but before the annuity has been purchased.

(4) The death benefit will be paid in accordance with the order of precedence as set forth in paragraph (a) of this section, if the Board learns that—

(i) Both the participant and the joint annuitant have died after the participant has completed an election to withdraw his or her TSP account balance in the form of a joint life annuity that does not include a cash refund, but the annuity has not yet been purchased; or

(ii) Both the beneficiary(ies) named under a cash refund election and the joint annuitant have died after the participant has completed an election to withdraw, but the annuity has not yet been purchased.

(5) The death benefit will be paid *pro rata* to the beneficiary(ies) designated on the Form TSP–11–B if the Board learns that the participant has died after having completed an election to withdraw his or her TSP account balance in the form of a single life annuity that includes either a cash refund or 10-year certain feature, but the annuity has not yet been purchased.

(6) The death benefit will be paid in accordance with the order of precedence set forth in paragraph (a) of this section if the Board learns that the participant and all beneficiaries designated on a Form TSP–11–B have died after the participant has completed an election to withdraw his or her TSP account balance in the form of a single life annuity that includes either a cash refund or a 10-year certain feature, but the annuity has not yet been purchased.

(7) The death benefit will be paid in accordance with the order of precedence as set forth in paragraph (a) of this section if a participant dies after having completed an election to withdraw his or her TSP account balance in the form of a single life annuity that does not include either a cash refund or 10-year certain feature, but before the annuity has been purchased.

(8) If a participant dies after the annuity purchase has been completed, benefit payments will be provided in accordance with the annuity method selected.

§ 1651.3 Designation of beneficiary.

(a) *Filing requirements.* In order to designate a beneficiary of a TSP account, the participant must complete and file Form TSP–3, Designation of Beneficiary, unless Form TSP–11–B is used for this purpose. All Forms TSP–3 and TSP–11–B signed on or after January 1, 1995, must be received by the TSP record keeper on or before the participant's date of death. If the Form TSP–3 was received and accepted by the participant's employing agency before January 1, 1995, the TSP record keeper will process it and determine its validity when it is received from the employing agency. A valid Form TSP–3 remains in effect until it is properly canceled or changed as described in § 1651.4.

(b) *Eligible beneficiaries.* Any individual, firm, cor poration, or legal entity, including the U.S. Government, may be designated as a beneficiary. Any number of beneficiaries can be named to share the death benefit. A beneficiary may be designated without the knowledge or consent of the beneficiary or the knowledge or consent of the participant's spouse.

(c) *Validity requirements.* In order to be valid, a Form TSP–3 must be signed by the participant in the presence of two witnesses, or the participant must acknowledge his or her signature on the Form TSP–3 in the presence of two wit nesses. A witness must be age 21 or older, and a witness designated as a beneficiary on the Form TSP–3 will not be entitled to receive a death benefit payment. If a witness is the only named beneficiary, the Form TSP–3 is invalid. If more than one beneficiary is named, the share of the witness beneficiary will be allocated among the remaining beneficiaries *pro rata.*

(d) *Will.* A will, or any document other than Form

TSP–3 or Form TSP–11–B, may not be used to designate a beneficiary(ies) of a TSP account.

§ 1651.4 Change or cancellation of a designation of beneficiary.

(a) *Change.* In order to change a designation of beneficiary, the participant must properly complete a new Form TSP–3, which must be received by the TSP record keeper on or before the date of death of the participant under the same rules as set forth in § 1651.3(a). The TSP record keeper will honor the Form TSP–3 with the latest date signed by the participant which is otherwise valid under the rules set forth in § 1651.3. A change of beneficiary may be made at any time and without the knowledge or consent of the participant's spouse or any current or prior designated beneficiaries.

(b) *Cancellation.* A participant may cancel all prior designations of beneficiaries by sending the TSP record keeper either a new valid Form TSP–3 or a letter, signed and dated by the participant and witnessed in the same manner as a Form TSP–3, stating that all prior designations are can celed. In order to be effective, either of these documents must be received by the TSP record keeper on or before the date of death of the participant in accordance with the rules set forth in § 1651.3(a). The filing of either of these documents will cancel all earlier designations.

(c) *Will.* A will, or any document other than Form TSP–3 or Form TSP–11–B, may not be used to change or cancel a beneficiary(ies) of a TSP account.

§ 1651.5 Widow or widower.

For purposes of payment under § 1651.2(a)(2), the widow or widower of the participant is the person to whom the participant is married on the date of death. A person is considered to be married even if the parties are separated, unless a court decree of divorce or annulment has been entered. State law of the participant's domicile will be used to determine whether the participant was married at the time of death.

§ 1651.6 Child or children.

If the account is to be paid to the child or children, or to descendants of deceased children by representation, as provided in § 1651.2(a)(3), the following rules apply:

(a) *Child.* A child includes a natural or adopted child of the deceased participant.

(b) *Descendants of deceased children.* ''By representation'' means that, if a child of the participant dies before the participant, all descendants of the deceased child at the same level will equally divide the deceased child's share of the participant's account.

(c) *Adoption by another.* A natural child of a TSP participant who has been adopted by someone other than the participant during the participant's lifetime will not be considered the child of the participant, unless the adopting parent is the spouse of the TSP participant.

§ 1651.7 Parent or parents.

If the account is to be paid to the participant's parent or parents under § 1651.2(a)(4), the following rules apply:

(a) *Amount.* If both parents are alive at the time of the participant's death, each parent will be separately paid fifty percent of the account. If only one parent is alive at the time of the participant's death, he or she will receive the entire account balance.

(b) *Step-parent.* A step-parent is not considered a parent unless the step-parent adopted the participant.

§ 1651.8 Participant's estate.

If the account is to be paid to the duly appointed executor or administrator of the participant's estate under § 1651.2(a)(5), the following rules apply:

(a) *Appointment by court.* The executor or administrator must provide documentation of court appointment.

(b) *Appointment by operation of law.* If state law provides procedures for handling small estates, the Board will accept the person authorized to dispose of the assets of the deceased participant under those procedures as a duly appointed executor or administrator. Documentation which demonstrates that the person is properly authorized under state law must be submitted to the TSP record keeper.

§ 1651.9 Participant's next of kin.

If the account is to be paid to the participant's next of kin under § 1651.2(a)(6), the next of kin of the participant will be determined in accordance with the state law of the participant's domicile at the time of death.

§ 1651.10 Deceased and non-existent beneficiaries.

(a) *Designated beneficiary dies before participant.* The share of any beneficiary designated on a Form TSP–3 or Form TSP–11-B who predeceases the participant will be paid *pro rata* to other designated beneficiary(ies). If there are no designated beneficiaries who survive the participant, the account will be paid to the person(s) determined to be the beneficiary(ies) under the order of precedence set forth in § 1651.2(a).

(b) *Trust designated as beneficiary but not in existence.* If a trust or other entity that has been designated as a beneficiary does not exist on the date of death of the participant, or if it is not created by will or other document that is effective upon the participant's death, the amount will be paid in accordance with the rules of paragraph (a) of this section, as if the trust were a beneficiary that predeceased the participant.

(c) *Non-designated beneficiary dies before participant.* If a beneficiary other than a beneficiary designated on a Form TSP–3 or a Form TSP–11–B (*i.e.*, a beneficiary by virtue of the order of precedence) dies before the participant, the beneficiary's share will be paid equally to other living beneficiary(ies) bearing the same relationship to the participant as the deceased beneficiary. However, if the deceased beneficiary is a child of the participant, payment will be made to the deceased child's descendants, if any. If there are no other beneficiaries bearing the same relationship or, in the case of children, there are no descendants of deceased children, the deceased beneficiary's share will be paid to the person(s) next in line according to the order of precedence.

(d) *Beneficiary dies after participant but before payment.* If a beneficiary dies after the participant, the beneficiary's share will be paid to the beneficiary's estate.

(e) *Death certificate.* A copy of a beneficiary's certified death certificate is required in order to establish that the beneficiary has died.

§ 1651.11 Simultaneous death.

If a beneficiary dies at the same time as the participant, the beneficiary will be treated as if he or she predeceased the participant and the account will be paid in accordance with § 1651.10. The same time is considered to be the same hour and minute as indicated on a death certificate. If the participant and beneficiary are killed in the same event, death is presumed to be simultaneous, unless evidence is presented to the contrary.

§ 1651.12 Homicide.

If the participant's death is the result of a homicide, a beneficiary will not be paid as long as the beneficiary is under investigation by local, state or Federal law enforcement authorities as a suspect. If the beneficiary is convicted of, or pleads guilty to, a crime in connection with the participant's death which would preclude the beneficiary from inheriting under state law, the beneficiary will not be entitled to receive any portion of the participant's account. The Board will follow the state law of the participant's domicile as that law is set forth in a civil court judgment (that, under the law of the state, would protect the Board from double liability or payment) or, in the absence of such a judgment, will apply state law to the facts after all criminal appeals are exhausted. The Board will treat the beneficiary as if he or she predeceased the participant and the account will be paid in accordance with § 1651.10.

§ 1651.13 How to apply for a death benefit.

In order for a deceased participant's account to be disbursed, the TSP record keeper must receive Form TSP–17, Application for Account Balance of Deceased Participant. Any potential beneficiary or other individual can file Form TSP–17 with the TSP record keeper. The individual submitting Form TSP–17 must attach a copy of a certified death certificate of the participant to the application. The acceptance of an application by the TSP record keeper does not entitle the applicant to benefits.

§ 1651.14 How payment is made.

(a) *Notice.* The TSP record keeper will send notice of pending payment to each beneficiary.

(b) *Payment.* Payment is made separately to each entitled beneficiary. It will be sent to the address that is provided on Form TSP–3, unless a more recent address is provided on Form TSP–17, or is otherwise provided to the TSP record keeper in writing by the beneficiary. All beneficiaries must provide the TSP record keeper with a taxpayer identification number; *i.e.*, Social Security number (SSN), employee identification number (EIN), or individual taxpayer identification number (ITIN), as appropriate.

(c) *Payment to widow or widower.* The widow or widower of the participant may request that the TSP transfer all or a portion of the payment to an Individual Retirement Arrangement (IRA). In order to request such a transfer, a spouse must file with the TSP record keeper Form TSP–13–S, Spouse Election to Transfer to IRA and Other Eligible Retirement Plan.

(d) *Payment to minor child or incompetent beneficiary.* Payment will be made in the name of a minor child or incompetent beneficiary. A parent or other guardian may direct where the payment should be sent and may make any permitted tax withholding election. A guardian of a minor child or incompetent beneficiary must submit court documen tation showing his or her appointment as guardian.

(e) *Payment to executor or administrator.* If payment is to the executor or administrator of an estate, the check will be made payable to the estate of the deceased participant, not to the executor or administrator. A TIN must be provided for all estates.

(f) *Payment to trust.* If payment is to a trust, the check will be made payable to the trustee. A TIN must be provided for the trust.

§ 1651.15 Claims referred to the Board.

(a) *Contested claims.* Any challenge to a proposed death benefit payment must be filed in writing with the TSP record keeper before payment. All contested claims will be referred to the Board. The Board may also consider issues on its own.

(b) *Payment deferred.* No payment will be made until the Board has resolved the claim.

§ 1651.16 Missing and unknown beneficiaries.

(a) *Locate and identify beneficiaries.* (1) The TSP record keeper will attempt to identify and locate all potential beneficiaries.

(2) If a beneficiary is not identified and located, and at least one year has passed since the date of the participant's death, the beneficiary will be treated as having predeceased the participant and the beneficiary's share will be paid in accordance with § 1651.10

(b) *Payment to known beneficiaries.* If all potential beneficiaries are known but one or more beneficiaries (and not all) appear to be missing, payment of part of the participant's account may be made to the known beneficiaries. The lost or unidentified beneficiary's share may be paid in accordance with paragraph (a) of this section at a later date.

(c) *Abandoned account.* If no beneficiaries of the account are located, the account will be considered abandoned and the funds will revert to the TSP. If there are multiple beneficiaries and one or more of them refuses to cooperate in the Board's search for the missing beneficiary, the missing beneficiary's share will be considered abandoned. In such circumstances, the account can be reclaimed if the missing beneficiary is found at a later date. However, earnings will not be credited from the date the fund is abandoned. The beneficiary will be required to submit Form TSP–17 and may be required to submit proof of his or her identity and relationship to the participant.

§ 1651.17 Disclaimer of benefits.

(a) *Disclaimer criteria.* The beneficiary of a TSP account may disclaim his or her right to receive the account. In order to be effective, the following criteria must be met:

(1) The disclaimer must be in writing. The writing must state specifically that the beneficiary is disclaiming his or her right to receive a death benefit payment from the TSP account of the participant.

(2) The disclaimer must be irrevocable.

(3) The disclaimer must be received by the TSP record keeper before payment is made.

(4) The disclaimant cannot direct to whom the disclaimant's portion of the participant's account should be paid.

(5) The disclaimant must disclaim the entire benefit, not a portion.

(b) *Treatment of disclaimed share.* The disclaimant will be treated as having predeceased the participant and his or her share will be paid in accordance with § 1651.10.

§ 1651.18 Payment to one bars payment to another.

Payment made to a beneficiary(ies) in accordance with this part, based upon information received before payment, bars any claim by any other person.

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Friday
June 13, 1997

Part V

Department of Agriculture

Rural Utilities Services

7 CFR Part 1703

Distance Learning and Telemedicine Loan and Grant Program; Rule; Notice

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1703

RIN 0572–AB31

Distance Learning and Telemedicine Loan and Grant Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) is amending its regulation concerning the Distance Learning and Telemedicine Grant Program. This final rule promulgates regulations for a new loan program that provides both loans and grants for distance learning and telemedicine projects benefiting rural areas. The regulation is necessary to implement a new loan program mandated by the Federal Agriculture Improvement and Reform Act of 1996. The regulation establishes, among other things, RUS' policy, the method of selecting projects to receive loans and grants and allocating the available funds, and the requirements for submitting an application for financial assistance.

DATES: This regulation is effective on June 13, 1997.

FOR FURTHER INFORMATION CONTACT: Robert Peters, Assistant Administrator, Telecommunications Program, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1590, Room 4056, South Building, Washington, DC 20250–1590. Telephone number (202) 720–9554.

SUPPLEMENTARY INFORMATION:

Classification

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

Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this final rule meets the applicable standards provided in Sec. 3. of the Executive Order.

Regulatory Flexibility Act Certification

On April 16, 1997, RUS published an initial regulatory flexibility analysis as part of the proposed rule (62 FR 18678), and did not receive any comments from the public specifically concerning the analysis. RUS has reviewed the initial regulatory flexibility analysis and determined that it should remain unchanged. In accordance with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the following sets forth the alternatives that would minimize the significant economic impact on small businesses.

Title VII, section 704, of the Federal Agriculture Improvement and Reform Act of 1996 (FAIR Act) (Public Law 104–127) amended Chapter 1 of subtitle D of title XXIII of the Food, Agriculture, Conservation, and Trade Act of 1990 by authorizing the Secretary of Agriculture to make loans for distance learning and telemedicine services in rural areas. This final rule amends 7 CFR part 1703 to set forth the rules for this new loan program to be administered by the RUS. The objectives of the final rule are to encourage and improve telemedicine and distance learning services in rural areas through the use of telecommunications, computer networks, and related advanced technologies by students, teachers, medical professionals, and rural residents.

The new RUS Distance Learning and Telemedicine loan program will assist in providing modern telecommunication interconnectivity to educational and medical facilities in rural America. Based on the past 4 years of Distance Learning and Telemedicine grant program activity, approximately 704 rural schools, serving hundreds of thousands of rural students, will gain access to improved educational resources through the information superhighway by sharing limited teaching resources and gaining access to libraries, training centers, vocational schools, and other institutions located in metropolitan centers. For telemedicine, approximately 500 rural medical facilities will gain access to improved medical care through linkage with other rural hospitals and major urban medical centers for clinical interactive video consultation, distance training of rural health care providers, management and transport of patient information, and access to medical expertise or library resources.

This final regulation sets forth the rules for the new loan program which will provide supplementary financial assistance for distance learning and telemedicine services in rural areas. The final regulation is needed in order to optimize the use of a limited source of grant and loan funding by setting forth certain criteria which will enable RUS to distribute the amount of financial assistance available among the greatest number of applicants in an economical, efficient, and orderly manner. A regulatory alternative that was considered was not to publish a regulation; however, the desired regulatory purposes, to improve the access of people residing in rural areas to improved educational, learning, training, and health care services and to achieve the maximum use of funds available, would not be achieved. This would not be achieved since the regulation sets forth the criteria for all to review that will be the basis for RUS determinations and actions.

Entities eligible for assistance under this final rule will be those entities that provide, or will provide, educational or health care services or the facilities needed to provide these services through the use of advanced telecommunications in rural areas. There is no good estimate, at this time, of the number of entities that will be affected by the final rule since the regulatory requirements will apply to only those entities which choose to apply for the financial assistance. However, RUS is estimating between 250 and 300 applications will be submitted annually under this program and of those applicants, between 30 and 50 grants and 100 and 120 loans or combination thereof would be awarded. RUS' existing Distance Learning and Telemedicine Grant Program, since its inception in 1993, has received nearly 900 applications for grants.

The various reporting and compliance requirements contained in this final rule for applicants are necessary to determine such factors as: eligibility; project purposes; compliance with other Federal regulations; project costs and alternative funding sources; project feasibility; and need for educational or telemedicine services. Those reporting requirements imposed on recipients of financial assistance are necessary to ensure proper use of financing for approved purposes. Some of the required reporting documents include information generally maintained by certain types of entities (i.e., patients or students served, financial statements, contracts, audits, etc.). The information collected is in a format designed to minimize the paperwork burden on small businesses and other small entities. The information collected is the minimum needed by RUS to approve financial assistance and monitor the grantee or borrower performance.

The impact on small entities will be limited to the reporting and compliance regulations which were designed to minimize the burden in order to encourage applicants. Even the compliance regulations are designed to only assure RUS that the financial assistance was utilized for Act purposes and also are regulations for already imposed government-wide financial assistance of any kind.

Information Collection and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 35) RUS requested comments on the information collection incorporated in the proposed rule published on April 16, 1997 (62 FR 18678). The deadline for submitting comments is June 16, 1997. The reporting and recordkeeping requirements contained in the final rule will not be effective until approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 35). Send questions or comments regarding this burden or any other aspect of these collections of information, including suggestions for reducing the burden, to F. Lamont Heppe, Jr., Director, Program Support 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.

National Environmental Policy Act Certification

RUS has determined that this final rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Program Affected

The program described by this final rule is listed in the Catalog of Federal Domestic Assistance programs under number 10.855, Distance Learning and Telemedicine Loan and Grant Program. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402.

Intergovernmental Review

This program is subject to the provisions of Executive Order 12372 that requires intergovernmental consultation with State and local officials.

Unfunded Mandate

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandate Reform Act) for State, local, and tribal governments or the private sector. Thus today's rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandate Reform Act.

Background

Title 7, CFR part 1703, subpart D, was originally published in the **Federal Register** February 26, 1993, (58 FR 11507), and became effective March 29, 1993. The Agriculture Improvement and Reform Act of 1996 (FAIR Act) modified the Distance Learning and Telemedicine (DLT) grant program by creating a loan component. The regulation was modified and published as a final rule in the **Federal Register** on June 27, 1996, (61 FR 33622), to incorporate the changes to the grant program mandated by the FAIR Act, excluding those provisions for administering a loan program since funds appropriated in fiscal year 1996 could only be used for grants. This final rule, while based in part on the existing rule, will (1) Establish criteria for loan and grant eligibility, (2) simplify the determination for the comparative rurality calculation, and (3) place greater emphasis on the need for distance learning or telemedicine services in the scoring criteria.

RUS received 5 comments regarding the proposed rule, which were taken into consideration in preparing the final rule. Overall, respondents generally expressed support for the proposed rule, but made specific comments. A list of the commenters and comment summaries and responses follows:

1. American Institute of Certified Public Accountants, Washington, DC.
2. Associated Communications and Research Services, Oklahoma City, OK.
3. Gershowitz Grant & Evaluation Services, Des Moines, IA.
4. Sequachee Valley Electric Cooperative, South Pittsburgh, TN.
5. State Education Department, University of the State of New York, Albany, NY.

Comment Summary. One organization commented that the proposed rule fails to address the issue of how the DLT program relates to other similar Federally-supported programs and questioned whether the regulations should require explicit coordination with other Federal programs. The commenter believes that such a requirement would strengthen the DLT program and better leverage Federal dollars to improve rural education and health care.

Response. As a leader in providing public/private partnerships for rural telecommunications financing, the RUS is already providing effective solutions to the national mission to build an Information Superhighway. The DLT program has been a resounding success and has begun to make a difference in rural communities. The use of advanced telecommunications systems and technologies has enabled rural America to begin to realize the benefits of a nationally integrated public network. RUS vigorously pursues avenues for providing information on the benefits of the DLT program to the widest possible number of rural Americans, private organizations, and other Federal agencies. To that end, the DLT homepage has been hyper-linked to other similar Federal programs; thus, making available nationwide access to information on the program. Further, the RUS consults with and exchanges information and expertise with other Federal agencies with information technology grant programs, including the Departments of Commerce, Education, and Health and Human Services. The DLT program complements, not duplicates, these other programs.

Comment Summary (section 1703.102 Definitions). Organizations commented that the term Champion Community requires further clarification. Since it is not a familiar concept, there needs to be guidance as to what a Champion Community is and how a community can obtain this designation.

Response. The Champion Community program stems from the Empowerment Zone/Enterprise Community (EZ/EC) program, a national competition created by this Administration. In essence, the EZ/EC program is about revitalizing low income neighborhoods, supporting grassroots and community-based planning, and creating new partnerships between neighborhoods, local government and the Federal government. In order to qualify, certain economic/demographic requirements have to be met, and the competing cities/towns have to submit innovative and comprehensive strategic plans for revitalization of the targeted areas.

RUS concurs with the recommendation and has reworded this definition for clarity. The definition of Champion Community has been revised to read as follows: ''A Champion Community is any community that submitted a valid application to become an Empowerment Zone/Enterprise Community (EZ/EC) area, met the requirements to be designated an EZ/EC area, but was not chosen because their score was not high enough to be selected.''

A complete list of Champion Communities can be found on the Internet at the following address: www.exec.gov/communit/champion.html; or by contacting the appropriate RUS Area office in Washington, DC.

Comment Summary (section 1703.108 Maximum grant and loan amounts, and section 1703.133(b) Minimum number of points required for a loan). Concern was expressed that with the effective date of the final rule being so close to the end of the fiscal year and the selection dates, that RUS not wait to publish the maximum grant and loan amounts, and minimum number of points required for a loan. This information may make a difference in determining whether an organization submits an application this fiscal year.

Response. RUS has committed to its customers that it will award the FY 1997 grants and loans in 1997. RUS preferred to provide the public with an opportunity to comment on the proposed rule prior to making such determinations. The maximum grant and loan amounts and minimum number of points required for a loan are published in a notice elsewhere in this separate part of the **Federal Register**.

Comment Summary (section 1703.109 (m) and (n) Coordination with USDA State Directors, Rural Development). One commenter suggested that it would be an advantage to have the paperwork for a grant or loan flow through the State offices for Rural Development. The commenter believes that this structure would put the fact analysis of the application process closer to the project.

Response. RUS requires all applicants to consult with the USDA State Director, Rural Development, to assure conformity with the USDA strategic plan in that State. Applicants are also required to consult with USDA State Directors on the availability of other sources of funding at the state or local level. Further, USDA state and local offices provide information and outreach regarding the program. The program, however, is a nationwide competition which awards the best projects from throughout the country using a consistent and developed expert evaluation process. The RUS ensures that reviewers of applications have technical or managerial expertise in the fields of telecommunications, telemedicine, distance learning and project management and are able to evaluate sufficiently each application fully on its merits. From this process the best of the best are awarded nationwide recognition and support. State and local offices are encouraged to ensure all eligible recipients have the opportunity to compete.

Comment Summary (section 1703.112 Determination of types of financial assistance). One commenter suggested that RUS grant funds be reserved for K–12 school districts only and that loans to educational facilities be restricted to colleges and universities. Since K–12 school districts are generally prohibited from incurring long-term debt, this recommendation should be strongly considered.

Response. The DLT program is intended primarily to benefit people, not institutions. Colleges and universities are existing sources of advanced education that can be made available to K–12 schools through distance learning without incurring the additional cost of duplicating existing educational sources. To integrate advanced technologies into K–12 classrooms, libraries and other educational settings, RUS encourages the establishment of consortia to help address the effective use of technology in distance learning and telemedicine services. The legislative history of the DLT program evidences a clear intention to use the benefits of technology to bring the advantages of sophisticated educational and medical resources to residents of rural areas. Thus, educational institutions at all levels are encouraged to participate in the program for the express purpose of providing service to rural residents.

Comment Summary (section 1703.112(b) Determination of types of financial assistance). An organization commented that the National School Lunch Program (NSLP)-based system for determining eligibility for financial assistance is flawed since the percentage of lunch-eligible children is only a partial relationship to an applicant's ability to pay for telecommunications technology. The commenter suggested that the additional factor of ''proximity to interstate highways'' be considered. For instance, in rural areas, a community's location adjacent to an interstate highway results in commercial development, producing significant tax ratables. A community that is distant from an interstate may have a higher per-capita income (hence, fewer lunch-eligible children), but a significantly lower tax base, and therefore be less able to purchase technology without external support.

Another commenter also questioned whether this type of measure is as effective as the measures used in other rural economic development programs, e.g., poverty and unemployment levels. The NSLP-system posed an anomaly for one particular school district the commenter studied. They found that the middle school had a rate of 64 percent where the high school had a rate of only 36 percent participation. They questioned if this was a nation-wide trend.

Concern was also expressed over the three categories used to determine eligibility for type of financial assistance and suggested the thresholds be lowered; thereby allowing for a greater number of applicants eligible for grants only.

An organization also commented that some in school districts believe that persons who could qualify do not apply for a Federally-funded school lunch because they fear the stigma more than the possible benefit. Thus, there could well be built in differences between communities based on mores. The commenter believes that, in gathering NSLP percentages and ratios across the country and permitting local presentation in a particular application, the results may prove far from objective.

In addition, it was suggested that the two gaps, 32–33 percent and 60–61 percent, in the eligibility formula be addressed. The eligibility status of applicants who fall into these gaps is ambiguous.

Response. The RUS' choice of using the school lunch program is consistent with the Federal Communications Commission's (FCC) implementation of the discounts for telecommunications services for all schools (K–12), libraries, and rural health care providers, as required by the Telecommunications Act of 1996. The FCC, like the RUS, uses the school lunch program, in part, because it is an adjusted measure of average financial make-up of a community. The DLT program fits hand-in-glove with the FCC discounts, with the FCC discounts focusing on monthly operating expense and inside wire, and the DLT focusing on end-user equipment. It is an added benefit that the RUS and the FCC both chose the school lunch program.

With regard to employing a measure different from the NSLP such as poverty and unemployment levels, which are usually determined based on county demographics, rural areas that contain high levels of unemployment and extreme levels of people on public assistance are sometimes located in urban counties. The NSLP-based system emphasizes the location of the residences of the users of the project itself, and is a good determinant for measuring the relative well-being of the area. This approach, based on a school districts level of eligibility not level of student participation, highlights an important characteristic of the most needy parts of rural areas that make them different from more affluent areas; financial hardship. This method also offers a particular advantage to RUS in administering this program. The NSLP-based system is objective and easy for applicants to understand and RUS to administer.

The intent of the three categories of applicants is to maximize the benefits of a limited source of grant funding by awarding grants to those applicants serving areas of financial need. Except as cited in § 1703.118, grants will only be awarded to applicants that do not have the resources to repay loans. The 1995 statistics for the NSLP indicate that the percentages to be used to establish eligibility for loans and grants will result in financial assistance in the form of loans for about 75 percent of qualifying applications.

With regard to the two gaps in the percentage ratios used in the eligibility formula, the regulation has been revised to clarify that RUS will round up to the next highest or round down to the next lowest whole number for fraction of percentages at or greater than .5 or less than .5, respectively.

RUS recognizes that the preamble, under ''Need for Services'' inadvertently indicated that the points available for this scoring criterion have been increased to represent 26 percent of the total possible points available for any project. The percent should have read 24.32 not 26 percent.

Comment Summary (section 1703.112(f) Determination of types of financial assistance). One organization commented that the method for determining the loan-grant ratio is arbitrary. Applicants invest significant time and financial resources in the preparation of proposals that risk receiving only $5,000 in grant funds. It was recommended that the minimum grant size be raised to a more significant level (e.g., $50,000), or that objective criteria on ability to pay be published and used to make the determination.

Response. RUS has determined that based upon the great need for these types of projects and the limited amount of available grant funds, the ratios established would allow RUS to fund more projects. Therefore, RUS was not persuaded by the comment and has determined that in this regard the regulation should remain unchanged. RUS intends to get maximum benefit for the dollars invested. Thus, considering the funding limitations for this program, RUS believes the method for determining the loan-grant ratio fairly represents and meets the intent of the program. The purpose of this program is to provide financial assistance, and, such is accomplished through grants, loans, and loan-grant combinations. The proposed method maximizes the delivery of needed funds to rural areas.

Comment Summary (section 1703.117(b)(1) Scoring criteria-Need for services). A comment was made regarding the desire to have quantifiable measures developed for this analysis area. The commenter believes that from the suggested topics listed in this section, some level of points can be assigned to each of the four (ii, iii, iv, and v) benefit areas.

Response. The intent of RUS is to allow applicants the flexibility to submit any substantiated information that will strengthen the documentation of their application relative to need. Categorizing ''needs'' may penalize many worthwhile projects since the scope of the ''need issue'' is so broad. RUS has provided some examples of how applicants'' proposed projects will meet the needs of their community, but feels it is necessary that the applicants have the flexibility to document their unique ''needs.''

RUS solicited from the public suggestions on any objective method that could be used or indications that the subjective method is acceptable. No alternatives, however, were suggested and other methods examined by RUS proved too restrictive. The regulation remains as proposed.

Comment Summary (section 1703.128 Audit requirements). This section of the proposed rule stated that grant and loan recipients must provide an audit in accordance with 7 CFR part 3015, subpart I. One commenter stated that the referenced regulatory section subpart I, which discusses the requirements of the Single Audit Act of 1984, became outdated with the passage of the Single Audit Act Amendments of 1996 (Public Law 104–156). Since the requirements of the Amendments of 1996 are effective for fiscal years beginning after June 30, 1996, it was recommended that RUS update the regulation accordingly.

Response. The final rule has been changed to refer to the audit requirements contained in 7 CFR part 3051, Audits of Institutions of Higher Education and Other Nonprofit Institutions, or its successor, and 7 CFR part 1773, Policy on Audits of RUS Borrowers. Part 3051 applies to not-for-profit organizations (including hospitals, colleges and universities) and state, local and Indian tribal governments. Part 1773 applies to for-profit organizations.

To further clarify that only applicants who have the least ability to repay the full amount of financial assistance provided receive grants or loan/grant combinations, RUS is adding the following sentence to § 1703.112(a)(2): ''The applicant's ability to pay for the project. Financial assistance in the form of grants or a combination of loans and grants will be made available only to those otherwise eligible applicants determined by the Administrator, after review of the financial information furnished by the applicant, to have the least ability to repay the full amount of assistance provided.''

RUS also substituted the words *financial assistance* for *funding* in the heading of § 1703.109 and § 1703.112, and throughout the final rule where appropriate. Since the term *financial assistance* is defined in the final rule, this change was made in the interest of uniformity.

RUS has determined that unless this rule is effective upon publication in the **Federal Register**, it is unlikely that much if any of the Fiscal Year 1997 authorization for the Distance Learning and Telemedicine Loan and Grant Program will be available for use by loan and grant recipients before the authorization lapses.

List of Subjects in 7 CFR Part 1703

Community development, Grant programs—education, Grant programs—health care, Grant programs—housing and community development, Loan programs—education, Loan programs—health care, Loan programs—housing and community development, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, chapter XVII of title 7 of the Code of Federal Regulations is amended as follows:

PART 1703—RURAL DEVELOPMENT

1. The authority citation for part 1703 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.* and 950aaa *et seq.*; Pub. L. 103–354, 108 Stat 3178 (7 U.S.C. 6941 *et seq.*).

2. Subpart D of part 1703 is revised to read as follows:

Subpart D—Distance Learning and Telemedicine Loan and Grant Program

Sec.

Subpart D—Distance Learning and Telemedicine Loan and Grant Program

§ 1703.100 Purpose.

The purpose of this subpart is to encourage and improve telemedicine services and distance learning services in rural areas through the use of telecommunications, computer networks, and related advanced technologies by students, teachers, medical professionals, and rural residents.

§ 1703.101 Policy.

(a) RUS recognizes that the transmission of information is vital to the economic development, education, and health of rural Americans. To further this objective, RUS will award loans and grants under this subpart to distance learning and telemedicine projects that will improve the access of people residing in rural areas to improved educational, learning, training, and health care services. Unless a distinction is made in the various sections of this subpart, all aspects of this subpart will apply to all requests for financial assistance.

(b) In providing assistance under this subpart, RUS will give priority to rural areas that it believes have the greatest need of distance learning and telemedicine services. RUS believes that generally the need is greatest in economically challenged areas and those requiring high costs to serve. This program is consistent with provisions of the 1996 Telecommunications Act (Public Law 104–104, 110 Stat. 56) that designates telecommunications service discounts for schools, libraries, and rural health care providers providing benefits to rural end-users. RUS will take into consideration the community's involvement in the project and the applicant's ability to leverage grant funds based on its access to capital.

(c) RUS believes that the residents of rural areas and their local institutions which serve them can best determine what are the most appropriate communications or information systems for use in their respective communities. Therefore, in administering this subpart, RUS will not favor or mandate the use of one particular technology over another.

(d) All rural institutions are encouraged to cooperate with each other and with applicants and end users in promoting the program being implemented under this subpart.

(e) RUS staff will make diligent efforts to inform potential applicants in rural areas of the program being implemented under this subpart.

(f) Financial assistance under this subpart will consist of grants or cost of money loans, or both. The Administrator shall determine the portion of the financial assistance provided to a recipient that consists of grants and the portion that consists of cost of money loans so as to result in the maximum feasible repayment to the government of the financial assistance, based on the ability of the recipient to repay and with the full utilization of funds made available to carry out this subpart.

(g) The Administrator may provide a cost of money loan to entities using telemedicine and distance learning services, and, to entities providing or proposing to provide telemedicine service or distance learning service to other persons at rates calculated to ensure that the benefit of the financial assistance is passed through to the other persons.

(h) The Administrator may provide a cost of money loan under this subpart to a borrower of a telecommunications or electric loan under the Rural Electrification Act of 1936, as amended. A borrower receiving a cost of money loan under this subpart shall:

(1) Make the funds provided available, under any terms it so chooses as long as the terms are no more stringent than the terms under which it received the financial assistance, to entities that qualify as distance learning or telemedicine projects satisfying the requirements of this subpart.

(2) Use the funds provided to acquire, install, improve, or extend a system referred to in this subpart.

§ 1703.102 Definitions.

Act means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).

Administrator means the Administrator of the Rural Utilities Service, or designee or successor.

Applicant means an eligible organization which applies for financial assistance under this subpart.

Champion Community means any community that submitted a valid application to become an Empowerment Zone/Enterprise Community (EZ/EC) area, met the requirements to be designated an EZ/EC area, but was not chosen because their score was not high enough to be selected.

Completed application means an application that includes all those items specified in § 1703.109 in form and substance satisfactory to the Administrator.

Comprehensive rural telecommunications plan means the plan submitted by an applicant in accordance with § 1703.109(a).

Computer networks means computer hardware and software, terminals, signal conversion equipment including both modulators and demodulators, or related devices, used to communicate with other computers to process and exchange data through a telecommunication network in which signals are generated, modified, or prepared for transmission, or received, via telecommunications terminal equipment and telecommunications transmission facilities.

Consortium means a combination or group of eligible entities formed to undertake the purposes for which the distance learning and telemedicine financial assistance is provided. Each consortium shall be composed of a minimum of two eligible organizations that meet the requirements of § 1703.103.

Construct means to acquire, construct, extend, improve, or install a facility or system.

Cost of money loan means a loan made under the DLT program bearing interest at a rate equal to the then current cost of money to the government, at the time the feasibility study is completed, for loans of similar maturity not to exceed 10 years.

Data terminal equipment means equipment that converts user information into data signals for transmission, or reconverts the received data signals into user information, and is normally found on the terminal of a circuit and on the premises of the end user.

Distance learning means a telecommunications link to an end user through the use of eligible equipment to:

(1) Provide educational programs, instruction, or information originating in one area, whether rural or not, to students and teachers who are located in rural areas; or

(2) Connect teachers and students, located in one rural area with teachers and students that are located in a different rural area.

DLT borrower means an entity that has outstanding loans under the provisions of the DLT program.

DLT program means the Distance Learning and Telemedicine Loan and Grant Program administered by RUS pursuant to subtitle D, chapter 1, of the Rural Economic Development Act of 1990, as amended (7 U.S.C. 950aaa through 950aaa–4).

Economic useful life as applied to facilities financed under the DLT program means the number of years resulting from dividing 100 percent by the depreciation rate (expressed as a percent) based on Internal Revenue Service depreciation rules or recognized telecommunications industry guidelines.

Eligible equipment means computer hardware and software, audio and visual equipment, computer network components, telecommunications terminal equipment, telecommunications transmission facilities, data terminal equipment, inside wiring, interactive video equipment, or other facilities that would further telemedicine services or distance learning services. Land, buildings, or building construction are not considered eligible equipment (see § 1703.107(a)(10)).

Eligible organization means an incorporated entity that meets the requirements of § 1703.103.

Empowerment Zone and Enterprise Community (EZ/EC) means any community whose designation as such pursuant to 26 U.S.C. 1391 *et seq.* is in effect at the time RUS agrees to provide financial assistance.

End user means either or both of the following:

(1) Rural elementary or secondary schools or other educational institutions, such as institutions of higher education, vocational and adult training and education centers, libraries, and teacher training centers, and students, teachers and instructors using such rural educational facilities, that participate in a rural distance learning telecommunications program through a project funded under this subpart;

(2) Rural hospitals, primary care centers or facilities, such as medical centers and clinics, and physicians and staff using such rural medical facilities, that participate in a rural telemedicine program through a project funded under this subpart.

End user site means a facility that is part of a network or telecommunications system that is utilized by end users.

Financial assistance shall consist of grants, cost of money loans, or both, made under the DLT program.

Grant documents means the letter of agreement, including any amendments and supplements thereto, between RUS and the grant recipient.

Grantee means a recipient of a grant from RUS to carry out the purposes of the DLT program.

Hub means control center of a network or telecommunications system.

Instructional programming means educational material, including computer software, which would be used for educational purposes in connection with eligible equipment but does not include salaries, benefits, and overhead of medical or educational personnel.

Interactive video equipment means equipment used to produce and prepare for transmission audio and visual signals from at least two distant locations such that individuals at such locations can orally and visually communicate with each other. Such equipment includes monitors, other display devices, cameras or other recording devices, audio pickup devices, and other related equipment.

Letter of agreement means a legal document executed by RUS and the grantee that contains specific terms, conditions, requirements, and understandings applicable to a particular grant.

Loan documents mean the loan agreement, note, and security agreement, including any amendments and supplements thereto, between RUS and the DLT or Telecommunications/Electric borrower.

Local exchange carrier means a commercial, cooperative or mutual-type association, or public body that is engaged in the provision of telephone exchange service or exchange access.

Matching funds means the applicant's funding contribution for allowable purposes.

National School Lunch Program (NSLP) means the federally assisted meal program established under the National School Lunch Act of 1946 (42 U.S.C. 1751).

Project means an undertaking to provide or improve distance learning or telemedicine by using financial assistance provided under the DLT program.

Project service area means the area in which at least 90 percent of the persons to be served by the project are likely to reside.

Rural community facilities means facilities such as schools, libraries, learning centers, training facilities, hospitals, medical centers, or similar facilities, primarily used by residents of rural areas, that will use a telecommunications, computer network, or related advanced technology system to provide educational or health care benefits primarily to residents of rural areas.

RUS means the Rural Utilities Service, an agency of the United States Department of Agriculture formerly known as REA, *see* 7 CFR 1700.1.

Scope of work means a detailed plan of work that has been approved by the Administrator to be performed by the applicant using financial assistance provided under this subpart.

Secretary means the Secretary of Agriculture.

Technical assistance means:

(1) Assistance in learning to operate equipment or systems; and

(2) Studies, analyses, designs, reports, manuals, guides, literature, or other forms of creating, acquiring, or disseminating information.

Telecommunications carrier means any provider of telecommunications services.

Telecommunications/Electric borrower means an entity that has outstanding electric or telecommunications RUS or Rural Telephone Bank loans or loan guarantees under the provisions of the Act.

Telecommunications terminal equipment means the assembly of telecommunications equipment at the end of a circuit or path of a signal, including but not limited to over the air broadcast, satellite, and microwave, normally located on the premises of the end user, that interfaces with telecommunications transmission facilities, and that is used to modify, convert, encode, or otherwise prepare signals to be transmitted via such telecommunications facilities, or that is used to modify, reconvert, or carry signals received from such facilities, the purpose of which is to accomplish the goal for which the circuit or signal was established.

Telecommunications transmission facilities means facilities that transmit, receive, or carry data between the telecommunications terminal equipment at each end of the telecommunications circuit or path. Such facilities include microwave antennae, relay stations and towers, other telecommunications antennae, fiber-optic cables and repeaters, coaxial cables, communication satellite ground station complexes, copper cable electronic equipment associated with telecommunications transmissions, and similar items.

Telemedicine means a telecommunications link to an end user through the use of eligible equipment which electronically links medical professionals at separate sites in order to exchange health care information in audio, video, graphic, or other format for the purpose of providing improved health care services primarily to residents of rural areas.

§ 1703.103 Applicant eligibility and allocation of funds.

(a) To be eligible to receive financial assistance under this subpart, the applicant must be organized in one of the following corporate structures:

(1) An incorporated organization, partnership, Indian tribe and tribal organization as defined in 25 U.S.C. 450b (b) and (c), or other legal entity, including a municipal corporation or a private corporation organized on a for-profit or not-for-profit basis, which operates, or will operate, a school, college, university, learning center, training facility, or other educational institution, including a regional educational laboratory, library, hospital, medical center, medical clinic or any rural community facility. A state government, other than a state government entity that operates a rural community facility, is not considered an eligible applicant; or

(2) A consortium, as defined in § 1703.102. A consortium which includes a state government entity is only eligible if the state government entity operates a rural community facility; or

(3) An incorporated organization, partnership, Indian tribe and tribal organization as defined in 25 U.S.C. 450b (b) and (c), or other legal entity which is providing or proposes to provide telemedicine service or distance learning service to other legal entities or consortia at rates calculated to ensure that the economic value and other benefits of the distance learning or telemedicine grant is passed through to such other legal entities or consortia.

(b) At least one of the entities in a partnership or consortium must be eligible individually, and the partnership or consortium must provide written evidence of its legal capacity to contract with RUS. If a partnership or consortium lacks the capacity to contract, each individual entity must contract with RUS on its own behalf.

(c) A borrower of an electric or telecommunications loan under the Act is eligible for a cost of money loan only.

(d) All applications for financial assistance, with the exception of applications requesting a loan and having the minimum required score, will be ranked by the type of application (health care or educational) and total points scored. Grant funds available for medical and educational applicants will be allocated based on the total number of medical and educational applications scoring in the top 50 percent of all applications received for that fiscal year. Applications will be ranked only in one category based on the predominant use of the project.

§ 1703.104 Allowable grant and loan funding percentage.

(a) Financial assistance, except as noted in paragraph (b) of this section, may be used by eligible organizations for distance learning and telemedicine projects to finance up to 70 percent of the cost of allowable purposes outlined in § 1703.105 provided that no financial assistance may exceed the maximum grant or loan amount for the year in which the grant or loan is made.

(b) Cost of money loans requested by an applicant may be used by eligible organizations for distance learning and telemedicine projects to finance up to 90 percent of the cost of allowable loan purposes outlined in § 1703.105, provided that no loan may exceed the maximum loan amount for the year in which the loan is made. Financial assistance applications that do not request a loan and qualify for a loan or combination loan and grant will be funded up to 70 percent of the cost of allowable purposes.

§ 1703.105 Grant and loan purposes.

Grants and loans shall be limited to costs associated with the initial capital assets associated with the project. Grant and loan funds as set out in the last sentence of this section shall not exceed twenty percent (20 percent) of the requested financial assistance. The following are allowable grant and loan purposes:

(a) Acquiring, by lease or purchase, eligible equipment as defined in § 1703.102;

(b) Acquiring instructional programming; and

(c) Providing technical assistance and instruction for using eligible equipment, including any related software; developing instructional programming; providing engineering or environmental studies relating to the establishment or expansion of the phase of the project that is being financed with the financial assistance.

§ 1703.106 In-kind matching provisions.

(a) In-kind matching, the applicant's minimum funding contribution (specified in § 1703.104) for allowable purposes, is generally required in the form of cash. However, in-kind contributions for the purposes listed in § 1703.105 may be substituted for cash.

(b) In-kind items listed in § 1703.105 must be non-depreciated or new assets with established monetary value. Manufacturers or service providers discounts are not considered in-kind matching.

(c) Financial assistance may be provided for end user sites. Financial assistance may also be provided for hubs located in rural or non-rural areas, if they are necessary to provide distance learning or telemedicine services to rural residents at end user sites.

§ 1703.107 Ineligible loan and grant purposes.

(a) Without limitation, financial assistance under this subpart will not be provided:

(1) To cover the costs of installing or constructing telecommunications transmission facilities, except as provided in paragraph (c) of this section;

(2) To pay for medical equipment except medical equipment primarily used for encoding and decoding data, such as images, for transmission over a telecommunications or computer network;

(3) To pay salaries, wages, or employee benefits to medical or educational personnel;

(4) To pay for the salaries or administrative expenses of the applicant or the project;

(5) To purchase equipment that will be owned by the local exchange carrier or another telecommunications service provider;

(6) To duplicate facilities providing distance learning or telemedicine services in place or to reimburse the applicant or others for costs incurred prior to RUS' receipt of the completed application;

(7) To pay costs of preparing the application package for financial assistance under this program;

(8) For projects whose sole objective is to provide links between teachers and students or medical professionals who are located at the same facility;

(9) For site development and the destruction or alteration of buildings;

(10) For the purchase of land, buildings, or building construction;

(11) For projects located in areas covered by the Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*);

(12) For any purpose that the Administrator has not specifically approved; or

(13) Except for leases provided in § 1703.105, to pay the cost of recurring or operating expenses for the project.

(b) Except as otherwise provided in § 1703.140, funds shall not be used to finance a project in part when success of the project is dependent upon the receipt of additional financial assistance under this subpart D or is dependent upon the receipt of other funding that is not assured.

(c) Loans can be used to cover the costs of telecommunications transmission facilities if no telecommunications carrier will install such facilities under the Act or through other financing procedures within a reasonable time period and at a cost to the applicant that does not jeopardize the feasibility of the project, as determined by the Administrator.

§ 1703.108 Maximum and minimum sizes of a grant and a loan.

Applications for grants and loans to be considered under this subpart will be subject to limitations on the proposed amount of financial assistance. The Administrator may establish the maximum amount of financial assistance to be made available to an individual recipient for each fiscal year under this subpart, by publishing notice of the maximum amount in the **Federal Register** not more than 45 days after funds are made available for the fiscal year to carry out this subpart. The minimum size of a grant or loan is $50,000.

§ 1703.109 The application for financial assistance.

The following items comprise the required material that must be submitted to RUS in support of the application for financial assistance:

(a) Proposed scope of work of the project. The proposed scope of work of the project which includes, at a minimum:

(1) The specific activities to be performed under the project;

(2) Who will carry out the activities;

(3) The time-frames for accomplishing the project objectives and activities; and

(4) A budget for capital expenditures reflecting the line item costs for both the grant and loan funds and other sources of funds for the project.

(b) Executive summary for the project. The applicant must provide RUS a general project overview, verification of compliance with the general requirements of this subpart, and documentation of eligibility. The executive summary shall contain the following 9 categories:

(1) A description of why the project is needed.

(2) An explanation of how the applicant will address the need cited in paragraph (b)(1) of this section, why the applicant requires financial assistance and types of educational or medical services to be offered by the project, and the benefits to the rural residents.

(3) A description of the applicant, documenting eligibility with § 1703.103.

(4) An explanation of the total cost of the project including a breakdown of the RUS financial assistance required and the source of funding for the remainder of the project.

(5) A statement that the project is either a distance learning or telemedicine facility as defined in § 1703.102. If the project provides both distance learning and telemedicine services, the applicant must identify the predominant use of the system.

(6) A general overview of the telecommunications system to be developed, including the types of equipment, technologies, and facilities used.

(7) A description of the participating hubs and end user sites and the number of rural residents which will be served by the proposed project at each end user site.

(8) The applicant must certify that facilities using financial assistance do not duplicate adequate established telemedicine services or distance learning services. RUS will make the final determination whether or not financial assistance requested by an applicant will duplicate such adequate established services.

(9) A listing of the location of each end user site (city, town, village, borough or rural area plus the state) discussing how the appropriate National School Lunch Program eligibility percentage was determined in accordance with § 1703.112. These percentages may be obtained from the State or local organization that administers the program and must be certified by that organization as being correct.

(c) Financial information. The applicant must provide financial information to support the need for the financial assistance requested for the project. It must show its financial capacity to carry out the proposed work, and show project feasibility. For educational institutions participating in a project application (including all members of a consortium), the financial data must reflect revenue and expense reports and balance sheet reports, reflecting net worth, for the most recent annual reporting period preceding the date of the application. For medical institutions participating in a project application (including all members of a consortium), the financial data must include income statement and balance sheet reports, reflecting net worth, for the most recent completed fiscal year preceding the date of the application. When the applicant is a partnership, company, corporation or other entity, current balance sheets, reflecting net worth, are needed from each of the entities that has at least a 20 percent interest in such partnership, company, corporation or other entity. When the applicant is a consortium, a current balance sheet, reflecting net worth, is needed from each member of the consortium and from each of the entities that has at least a 20 percent interest in such member of the consortium.

(1) Applicants must include sufficient pro-forma financial data which adequately reflects the financial capability of project participants and the project as a whole to continue a sustainable project for a minimum of 10 years after completion of the project. This documentation should include sources of sufficient income or revenues to pay operating expenses including telecommunications access and toll charges, system maintenance, salaries, training, and any other general operating expenses, and provide for replacement of depreciable items.

(2) For applicants requesting a loan and applicants who qualify for a loan or a combination loan/grant in accordance with § 1703.112, the documentation must demonstrate the ability to repay the loan. RUS will consider a secured loan guarantee by a third party as evidence of the ability of the applicant to repay a loan.

(3) For each hub and end user site, the applicant must identify and provide reasonable evidence of each source of revenue. If the projection relies on cost sharing arrangements among hub and end user sites, the applicant must provide evidence of agreements made among project participants.

(4) For applicants eligible under § 1703.103(a)(3), an explanation of the economic analysis justifying the rate structure to ensure that the benefit, including cost saving, of the financial assistance is passed through to the other persons receiving telemedicine or distance learning services.

(5) For RUS telecommunications and electric borrowers applying for a cost of money loan, the only financial information required in support of that application is the respective most recent

Annual Report to RUS (i.e. RUS Form 479, Form 7, or Form 12).

(d) A statement of experience. The applicant must provide a written narrative (not exceeding three single spaced pages) describing its demonstrated capability and experience, if any, in operating an educational or health care endeavor and any project similar to the proposed project. Experience in a similar project is desirable but not required.

(e) Funding commitment from other sources. The applicant must provide evidence, in form and substance satisfactory to the Administrator, that all funds in addition to funds provided under this subpart are committed and will be used for the proposed project.

(f) Telecommunications System Plan. A Telecommunications System Plan, consisting of the following, is required. The items in paragraphs (f) (4) and (5) of this section are needed only when the applicant is requesting loan funds for telecommunications transmission facilities:

(1) The capabilities of the telecommunications terminal equipment, including a description of the specific equipment which will be used to deliver the proposed service. The applicant must document discussions with various technical sources which could include consultants, engineers, product vendors, or internal technical experts, provide detailed cost estimates for operating and maintaining the end user equipment and provide evidence that alternative equipment and technologies were evaluated.

(2) A listing of the proposed purchases or leases of telecommunications terminal equipment, telecommunications transmission facilities, data terminal equipment, interactive video equipment, computer hardware and software systems, and components that process data for transmission via telecommunications, computer network components, communication satellite ground station equipment, or any other elements of the telecommunications system designed to further the purposes of this subpart, that the applicant intends to build or fund using RUS financial assistance.

(3) A description of the consultations with the appropriate telecommunications carriers (including other interexchange carriers, cable television operators, enhanced service providers, providers of satellite services and telecommunications equipment manufacturers and distributors) and the anticipated role of such providers in the proposed telecommunications system.

(4) Results of discussion with local exchange carriers serving the project area addressing concerns in § 1703.107 (c).

(5) The capabilities of the telecommunications transmission facilities, including bandwidth, networking topology, switching, multiplexing, standards and protocols for intra-networking and open systems architecture (the ability to effectively communicate with other networks). In addition, the applicant must explain the manner in which the transmission facilities will deliver the proposed services. For example, for medical diagnostics, the applicant might indicate whether or not a guest or other diagnosticians can join the network from locations off the network. For educational services, indicate whether or not all hub and end-user sites are able to simultaneously hear in real-time and see each other or the instructional material in real-time. The applicant must include detailed cost estimates for operating and maintaining the network, and include evidence that alternative delivery methods and systems were evaluated.

(g) Proposed evaluation methodology. The applicant must provide a proposed method of evaluating the success of the project in meeting the objectives of the program as set forth in § 1703.100 and § 1703.101 and the proposed scope of work.

(h) Compliance with other Federal statues and regulations. The applicant is required to submit evidence that it is in compliance with other applicable Federal requirements including, but not limited to the following:

(1) Equal opportunity and nondiscrimination requirements;

(2) Architectural barriers;

(3) Flood hazard area precautions;

(4) Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs;

(5) Drug-free workplace;

(6) ''Certification Regarding Debarment, Suspension and Other Responsibility Matters—Primary Covered Transaction'' (See 7 CFR 3017.510);

(7) Intergovernmental review of Federal programs if clearing house(s) exists for the state(s) in which project is located; and

(8) Restrictions on lobbying. For an application for financial assistance in excess of $100,000, a certification statement, ''Certification Regarding Lobbying'' is required. If the applicant is engaged in lobbying activities, the applicant must submit a completed disclosure form, ''Disclosure of Lobbying Activities'' (see 7 CFR part 3018).

(i) (1) Environmental impact and historic preservation. The applicant must provide details of the project's impact on the environment and historic preservation. Grants and loans made under this part are subject to 7 CFR part 1794 which contains the policies and procedures of RUS for implementing a variety of Federal statues, regulations and executive orders generally pertaining to protection of the quality of the human environment that are listed in 7 CFR 1794.1. The application shall contain a separate section entitled ''Environmental Impact of the Project.''

(2) Environmental information. An ''Environmental Questionnaire,'' appendix A to this subpart, may be used by applicants to assist in complying with the requirements of this section. Copies of the Environmental Questionnaire are available from RUS.

(j) A completed Standard Form 424, ''Application for Federal Assistance,'' along with a board of directors resolution authorizing the request for financial assistance.

(k) Evidence of the applicant's legal existence and authority to enter into a grant or loan agreement with RUS and perform activities proposed under the grant or loan application.

(l) Evidence that the applicant is not delinquent on any obligation owed to the government (7 CFR parts 3016 and 3019).

(m) Evidence that the applicant has consulted with the USDA State Director, Rural Development, concerning the availability of other sources of funding available at the state or local level.

(n) Evidence from the USDA State Director, Rural Development, that the application conforms with the State strategic plan as prepared under section 381D of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*). The applicant should indicate if such a plan does not exist.

(o) A depreciation schedule covering all assets of the project. Those assets for which financial assistance is being requested should be clearly indicated.

(p) Supplemental information. The applicant should provide any additional information it considers relevant to the project and likely to be helpful in determining the extent to which the proposed project would further the purposes of this subpart.

(q) Additional information requested by RUS. The applicant must provide any additional information the Administrator may consider relevant to the application and necessary to adequately evaluate the application. RUS may also request modifications or changes, including changes in the amount of funds requested, in any proposal described in an application submitted under this subpart.

§ 1703.110 Conflict of interest.

At any time prior to the disbursement of a grant or loan awarded under this subpart, the Administrator may disqualify an otherwise eligible project whenever, in the judgment of the Administrator, the project would create a conflict of interest or the appearance of a conflict of interest. RUS will notify the applicant in writing of the Administrator's intention to disqualify the project under this section and set forth the basis for the Administrator's determination that a conflict of interest or appearance exists. Thereafter, the applicant will have 30 days from the date of such notice to file a written response with the Administrator. If the Administrator receives the applicant's response within the 30-day period, the Administrator will consider the information contained therein before making a final determination whether to disqualify the project. RUS will promptly notify the applicant of the final determination whether a conflict of interest or appearance of a conflict exists. If the determination is affirmative, the notice will also advise the applicant whether the project is disqualified or conditionally disqualified. If the project is conditionally disqualified, the notice will state under what circumstances the project may continue to be eligible for assistance under this subpart. The Administrator's decision under this section will be final.

§ 1703.111 [Reserved]

§ 1703.112 Determination of types of financial assistance.

(a) To maximize the use of available funding and to obtain the maximum repayment to the government, RUS will determine if an applicant will be awarded a grant, loan or a combination of both loans and grants based upon the following:

(1) The percentage of students eligible to participate in the National School Lunch Program in the areas where the end user sites comprising the project are located; and

(2) The applicant's ability to pay for the project. Financial assistance in the form of grants or a combination of loans and grants will be made available only to those otherwise eligible applicants determined by the Administrator, after review of the financial information furnished by the applicant, to have the least ability to repay the full amount of assistance provided.

(b) The methodology contained in this section will be used to evaluate the relative financial need of the applicant, community, and project. All applicants are required to provide the applicable percentage of students eligible to participate in the National School Lunch Program for each end user site which must be certified as being correct by the appropriate State or local organization administering the program. The type of financial assistance will be determined as follows:

(1) If the end user site(s) for the project have, or are located in school districts which have, from 0–32 percent student eligibility in the National School Lunch Program, the project qualifies for a loan.

(2) If the end user site(s) for the project have, or are located in school districts which have, from 33–60 percent student eligibility in the National School Lunch Program, the project qualifies for a loan and may be eligible for some grant funds.

(3) If the end user site(s) for the project have, or are located in school districts which have, from 61–100 percent student eligibility in the National School Lunch Program, the project qualifies for a grant. The applicant may indicate its desire to be considered for a loan or a combination loan and grant if denied a grant provided the financial data required in § 1703.109(c) indicates the ability to repay a loan. Grant applicants should indicate if they desire to be considered for a loan.

(4) Percentage ratios will be rounded up to the next highest or rounded down to the next lowest whole number for fraction of percentages at or greater than .5 or less than .5, respectively.

(c) The following guidelines will be used to determine the applicable National School Lunch Program eligibility percent for a particular end user site:

(1) Public schools or nonprofit private schools of high school grade or under will use the actual eligibility percentage for that particular school.

(2) Schools and institutions of higher learning ineligible to participate in the National School Lunch Program and non-school end user sites (medical facilities, libraries, etc.) will use the eligibility percentage of all students in the school district where the end user will be located.

(d) If all the end user sites in a proposed network or system fall within the same percentile category, the project will be eligible for the type of financial assistance set forth in paragraph (b) of this section.

(e) If end user sites fall within different percentile categories the eligibility percentages associated with each end user site will be averaged to determine the percentile category and type of financial assistance the applicant is eligible for. For purposes of averaging, if a hub is also utilized as an end user site, the hub will be considered as an end user site.

(f) For those applicants which qualify for a combination loan/grant, the Administrator will determine the amount of the grant the applicant will receive, if any, based upon analysis of the financial condition of the applicant as reflected by the information submitted under § 1703.109(c). The minimum amount of a grant will be $5,000.

(g) RUS will submit a letter to those applicants being offered financial assistance in the form of a loan, or a combination of a loan and grant, outlining terms and conditions of such assistance. The applicant will have 15 days from the date of the letter to accept the terms and conditions in the letter. If the applicant fails to respond within this time the Administrator may withdraw the offer of financial assistance and the applicant will have no right to appeal the withdrawal.

§ 1703.113 Application filing dates, location, processing, and public notification.

(a) Applications for financial assistance under this subpart shall be submitted to the Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1590, Washington, DC 20250–1590. Applications should be marked ''Attention: Assistant Administrator, Telecommunications Program''.

(b) Applications for loans can be submitted at any time. RUS will review each application for completeness in accordance with § 1703.109, and notify the applicant, within 15 working days of the receipt of the application, of the results of this review, citing any information which is incomplete. To be considered for loan funds during the fiscal year (FY) that the application is submitted, the applicant must submit any information needed to complete the application by June 30. If this review concludes that a loan is feasible and the application receives the required minimum number of points as determined using the scoring criteria in § 1703.117, the Administrator will immediately process the application. The minimum number of points required for a loan application to be immediately processed will be published in the **Federal Register** each fiscal year.

(c) Applications requesting grant funds must be submitted to RUS to arrive not later than August 12, 1997 if the applications are to be considered during FY 1997. Beyond FY 1997, all applications requesting grant funds must be submitted to RUS to arrive not later than April 30 if the applications are to be considered during the fiscal year the application is submitted. It is suggested that applications be submitted prior to the above deadline to ensure they can be reviewed and considered complete by the deadline. RUS will review each application for completeness in accordance with § 1703.109, and notify the applicant, within 15 working days of the receipt of the application, of the results of this review, citing any information which is incomplete. To be considered for grant funds, the applicant must submit the information to complete the application by August 12, 1997 in FY 97 and April 30 beyond FY 97. If the applicant fails to submit such information by the appropriate deadline, the application will be considered during the next fiscal year.

(d) The Administrator will publish, at the end of each fiscal year, a notice in the **Federal Register** of all completed applications receiving financial assistance under this subpart. The Administrator will also make those applications available for public inspection at the U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC. For purposes of this paragraph, applications include any information not protected by the Privacy Act of 1974, 5 U.S.C. 552a, and any other information that has not been designated as proprietary information by the applicant.

(e) All applicants must submit an original and two copies of a completed application. A grant applicant must also submit a copy of the application to the State government point of contact, if one has been designated for the state, at the same time it submits an application to RUS. All applications must include the information described in § 1703.109.

§§ 1703.114—1703.116 [Reserved]

§ 1703.117 Criteria for scoring applications.

(a) *Criteria*. The criteria in this section will be used by RUS to score applications that have been determined to be in compliance with the requirements of this subpart. Applicants shall address the following criteria:

(1) The need for services and benefits derived from services;

(2) The comparative rurality of the proposed project service area;

(3) The ability to leverage resources;

(4) Innovativeness of design;

(5) Connectivity with outside networks;

(6) The cost effectiveness of the design;

(7) Project participation in EZ/EC (Empowerment Zone and Enterprise Communities); and

(8) Project participation in Champion communities.

(b) *Scoring criteria*—(1) *The need for services and benefits derived from services*. (i) This criterion will be used by RUS to score applications based on the documentation submitted in support of the application for financial assistance that reflects the need for services and benefits derived from the services proposed by the project. Up to 45 points can be assigned to this criterion.

(ii) RUS will consider the extent of the applicant's documentation explaining the economic, education or health care challenges facing the community; the applicants proposed plan to address these challenges; how the financial assistance can help; and why the applicant cannot complete the project without a loan or grant. The Administrator will also consider any support by recognized experts in the related educational or health care field, any documentation substantiating the educational or health care underserved nature of the applicant's proposed service area, and any justification for specific educational or medical services which are needed and will provide direct benefits to rural residents. Some examples of benefits to be provided by the project include, but are not limited to:

(A) Improved education opportunities for a specified number of students;

(B) Travel time and money saved by telemedicine diagnosis;

(C) Number of doctors retained in rural areas;

(D) Number of additional students electing to attend higher education institutions;

(E) Lives saved due to prompt medical diagnosis and treatment;

(F) New education courses offered, including college level courses;

(G) Expanded use of educational facilities such as night training;

(H) Number of patients receiving telemedicine diagnosis;

(I) Provision of training, information resources, library assets, adult education, lifetime learning, community use of technology, jobs, connection to region, nation, and world.

(iii) That rural residents, and other beneficiaries, desire the educational or medical services to be provided by the project (a strong indication of need is the willingness of local end users or institutions to pay, to the extent possible, for proposed services).

(iv) The project's development and support based on input from the local residents and institutions.

(v) The extent to which the application is consistent with the State strategic plan prepared by the Rural Development State Director of the United States Department of Agriculture.

(2) *The comparative rurality of the proposed project service area*. (i) The methodology contained in this section is used to evaluate the relative rurality (i.e. population) of service areas for various projects. Under this system, the end user sites and hubs (as defined in § 1703.102) contained within the proposed project service area are identified. Then, those locations are given a score according to the population of the area where the end user sites are located. Up to 35 points can be assigned to this criterion.

(ii) The following definitions are used in the evaluation of rurality:

(A) Exceptionally Rural Area means any area of the United States not included within the boundaries of any incorporated or unincorporated city, village, or borough having a population in excess of 5,000 inhabitants.

(B) Rural Area means any area of the United States included within the boundaries of any incorporated or unincorporated city, village, or borough having a population over 5,000 and not in excess of 10,000 inhabitants.

(C) Urban Area means any area of the United States included within the boundaries of any incorporated or unincorporated city, village, or borough having a population in excess of 10,000 inhabitants.

(iii) The applicant will receive points as follows:

(A) There are a total of 35 possible points for this criterion. The maximum number of points each end user site can receive is determined by dividing the total possible points for this criterion, 35, by the total number of end user sites. If a hub is utilized as an end user site, the hub will be considered as an end user site.

(B) If the end user site is located in an Exceptionally Rural Area, it will receive the maximum number of points each end user site can receive. If the end user site is located in a Mid-Rural Area, it will receive 50 percent of the maximum number of points each end user site can receive. If the end user site is located in an Urban Area, it will receive 0 percent of the maximum number of points each end user site can receive.

(C) The total points for each end user site will be added to reach a final point total for the project.

(D) An application must receive a minimum of 18 points under this criterion to be eligible for any financial assistance.

(3) *The ability to leverage resources.* (i) This section is used to evaluate the ability of the applicant to contribute financially to the project and to secure other non-Federal sources of funding. Documentation submitted in support of the application for financial assistance should reflect any additional financial support for the project from non-Federal sources above the applicant's required percent matching of the RUS financial assistance as set forth in § 1703.104. The applicant must include evidence from authorized representatives of the sources that the funds are available and will be used for the proposed project—up to 35 points.

(ii) The applicant will receive points as follows:

(A) Matching for allowable financial assistance purposes greater than 30 percent, but less than or equal to 50 percent of the RUS financial assistance—10 points.

(B) Matching for allowable financial assistance purposes greater than 50 percent, but less than or equal to 100 percent of the RUS financial assistance—20 points.

(C) Matching for allowable financial assistance purposes greater than 100 percent, but less than or equal to 150 percent of the RUS financial assistance—25 points.

(D) Matching for allowable financial assistance purposes greater than 150 percent, but less than or equal to 200 percent of the RUS financial assistance—30 points.

(E) Matching for allowable financial assistance purposes greater than 200 percent of the RUS financial assistance—35 points.

(4) *Innovativeness of project.* This criterion will be used by RUS to score applications based on the documentation submitted in support of the application for financial assistance that reflects the innovative nature of the project. The applicant should explain the extent to which, if any, the project is an innovative approach to either delivering or using telecommunications to address the needs of the community, and how the project differs in approach from the typical educational or health care application of technology. Up to 20 points can be assigned to this criterion.

(5) *Connectivity with outside networks.* (i) This criterion will be used by RUS to score applications based on the documentation submitted in support of the application for financial assistance that reflects the extent to which the proposed project can be connected to other educational or health care networks. Up to 20 points can be assigned to this criterion.

(ii) Consideration will be given to the extent that the proposed project will interconnect with other existing networks at the regional, statewide, national or international levels. RUS believes that to the extent possible, educational and health care networks should be designed to connect to the widest practicable number of other networks that expand the capabilities of the proposed project, thereby affording rural residents opportunities that may not be available at the local level. The ability to connect to the internet alone can not be used as the sole basis to fulfill this criteria.

(iii) Consideration will also be given to the extent that facilities constructed with federal financial assistance, particularly financial assistance under this chapter provided to entities other than the applicant, will be utilized to extend or enhance the benefits of the proposed project.

(6) *Cost effective design.* (i) This criterion will be used by RUS to score applications based on the documentation submitted in support of the application for financial assistance that reflects the cost efficiency of the project design. Up to 15 points can be assigned to this criterion.

(ii) Consideration will be given to the extent that the proposed technology or technologies for delivering the proposed educational or health care services for the project service area are the most cost effective for the project proposed. The application must contain information necessary for RUS to use accepted analytical and financial methodologies to determine whether the applicant is proposing the most cost-effective option. RUS will consider the applicant's documentation comparing various systems and technologies, whether the applicant's system is the most cost-effective system, and whether buying or leasing specific equipment is more cost effective. Points will be deducted from the scores of the applications that fail to utilize existing telecommunications facilities that could provide the transmission path for the needed services.

(7) *Project participation in EZ/ECs.* This criterion will be used by RUS to score applications based on the documentation submitted in support of the application for financial assistance that reflects the designation of Empowerment Zones and Enterprise Communities (EZ/EC) included as beneficiaries of the proposed project. Ten (10) points will be assigned if at least one end user site is located in an EZ/EC.

(8) *Project participation in Champion Communities.* This criterion will be used by RUS to score applications based on the documentation submitted in support of the application for financial assistance that reflects the designation of Champion Communities included as beneficiaries of the proposed project. Five (5) points will be assigned if at least one end user site is located in a Champion Community.

§ 1703.118 Other application selection provisions.

(a) *Selection.* Applications will be selected for financial assistance based on scores, availability of funds, and the provisions of this section. RUS will make determinations regarding the reasonableness of all numbers; dollar levels; rates; the nature and design of the project; cost; location; and other characteristics of the application and the proposed project to determine the number of points assigned to a grant application for all selection criteria. Joint applications submitted by multiple applicants as set forth in § 1703.113 will be rated as a single application.

(b) Regardless of the number of points an application receives in accordance with § 1703.117 or the feasibility of the proposed project, the Administrator may, based on a review of the applications in accordance with the requirements of this subpart:

(1) Limit the number of applications selected for projects located in any one state during a fiscal year;

(2) Limit the number of selected applications for a particular project;

(3) Select an application receiving fewer points than another higher scoring application if there are insufficient funds during a particular funding period to select the higher scoring application; provided, however, the Administrator may ask the applicant of the higher scoring application if it desires to reduce the amount of its application to the amount of funds available if, notwithstanding the lower grant amount, the Administrator determines the project is financially feasible in accordance with § 1703.109(d)(1) at the lower amount;

(4) Award a grant to an applicant whose application carries out the priorities listed in the scoring criteria in such a way to make the application unique; or

(5) Award a grant to an applicant which would normally qualify for other

financial assistance, if the project achieves one or more of the following:

(i) Utilitizes cutting edge technology to provide a solution to a unique problem;

(ii) Provides services otherwise not possible in an extremely isolated geographic area; or

(iii) Provides inordinate quantifiable benefit to rural communities relative to the amount of financial assistance requested.

(c) RUS will not approve an application if RUS determines that:

(1) The applicant's proposal does not indicate financial feasibility or is not sustainable in accordance with the requirements of § 1703.109(d)(1);

(2) The applicant's proposal indicates technical flaws, which, in the opinion of RUS, would prevent successful implementation, operation, or sustainability of the proposed project; or

(3) Any other aspect of the applicant's proposal fails to adequately address any requirements of this subpart or contains inadequacies which would, in the opinion of RUS, undermine the ability of the project to meet the general purpose of this subpart or comply with policies of the DLT program set forth in § 1703.101.

(d) RUS may reduce the amount of the applicant's grant award based on insufficient program funding for the fiscal year in which the project is reviewed, and offer the applicant loan funds in addition to the grant funds, if RUS determines that, notwithstanding a lower grant award, the project will show financial feasibility in accordance with § 1703.109(d)(1), and continues to meet all other provisions of this subpart. RUS will discuss its findings informally with the applicant and make every effort to reach a mutually acceptable agreement with the applicant. Any discussions with the applicant and agreements made with regard to a reduced grant amount will be confirmed in writing, and these actions shall be deemed to have met the notification requirements set forth in paragraph (e) of this section.

(e) RUS will provide the applicant an explanation of any determinations made with regard to paragraphs (c)(1) through (c)(3) of this section prior to making final project selections for the year. The applicant will be provided 15 days from the date of RUS' letter to respond, provide clarification, or make any adjustments or corrections to the project. If, in the opinion of the Administrator, the applicant fails to adequately respond to any determinations or other findings made by the Administrator, the project will not be funded, and the applicant will be notified of this determination. If the applicant does not agree with this finding an appeal may be filed in accordance with § 1703.119.

§ 1703.119 Appeal provisions.

All qualifying applications under this subpart will be scored based on criteria in section § 1703.117. A determination will be made by RUS based on the highest ranking applications and the amount of funds available for grants and loans. All applicants will be notified in writing of the score each application receives, and included in this notification will be a tentative minimum required score to receive financial assistance. If the score received by the applicant could result in the denial of its application, or if its score, while apparently sufficient to qualify for financial assistance, may be surpassed by the score awarded to a competing application after appeal, the applicant may appeal its numerical scoring. Any appeal must be based on inaccurate scoring of the application by RUS and no new information or data that was not included in the original application will be considered. The appeal must be made in writing within 10 days after the applicant is notified of the scoring results. Appeals shall be submitted to the Administrator, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1590, Washington, DC 20250–1590. Thereafter, the Administrator will review the original scoring to determine whether to sustain, reverse or modify the original scoring determination. Final determinations will be made after consideration of all appeals. The Administrator's determination will be final. A copy of the Administrator's decision will be furnished promptly to the applicant. An appeal based solely upon the type of financial assistance the applicant qualifies for will not be considered.

§§ 1703.120—1703.121 [Reserved]

§ 1703.122 Further processing of selected applications.

(a) During the period between the submission of the application and the execution of implementing documents, the applicant must inform RUS if the project is no longer viable or the applicant no longer desires financial assistance for the project. If the applicant so informs RUS, the selection will be rescinded and written notice to that effect shall be sent promptly to the applicant.

(b) If an application has been selected and the nature of the project changes, the applicant may be required to submit a new application to RUS for consideration depending on the degree of change. A new application will be subject to review in accordance with this subpart. The selection may not be transferred to another project.

(c) If state or local governments raise objections to a proposed project under the intergovernmental review process that are not resolved within 3 months of the Administrator's selection of the application, the Administrator may rescind the selection and written notice to that effect will be sent promptly to the applicant.

(d) Recipients of financial assistance will be required to submit RUS Form 479–A, ''Distance Learning and Telemedicine Technical Questionnaire.''

(e) After an applicant selected for financial assistance has submitted such additional information, if any, RUS determines is necessary for completing the financial assistance documents, RUS will send the documents to the applicant to execute and return to RUS.

(1) The financial assistance documents will include, among other things, a letter of agreement for grants; loan documents, including third party guarantees, for loans; or any other legal documents the Administrator deems appropriate, including suggested forms of certifications and legal opinions.

(2) The letter of agreement and the loan documents will include, among other things, conditions on the release or advance of funds and include at a minimum, a project description, approved purposes, the maximum amount of the financial assistance, supplemental funds, required of the project and certain agreements or commitments the applicant may have proposed in its application. In addition, the loan documents may contain covenants and conditions the Administrator deems necessary or desirable to provide assurance that the loan will be repaid and the purposes of the loan will be accomplished.

(3) The recipient of a loan will be required to execute a security instrument in form and substance satisfactory to RUS.

(4) DLT borrowers must, before receiving any advances of loan funds, provide security that is adequate, in the opinion of RUS, to assure repayment, within the time agreed, of all loans to the borrower under the DLT program. This assurance will generally be provided by a first lien upon all of the borrower's assets or such portion thereof as shall be satisfactory to RUS. RUS may consider the projected revenues from the facilities subject to the lien.

(5) Security may also be provided by third-party guarantees, letters of credit,

pledges of revenue or other forms of security satisfactory to RUS.

(6) The security instrument and other loan documents required by RUS in connection with loans under the DLT program shall contain such pledges, covenants, and other provisions as may, in the opinion of RUS, be necessary or desirable to secure repayment of the loan.

(7) If the facilities financed do not constitute a complete operating system, the DLT borrower shall provide evidence demonstrating, to RUS' satisfaction, that the borrower has sufficient contractual or other arrangements to assure that the facilities financed will provide adequate and efficient service.

(f) Until the letter of agreement or loan documents have been executed and delivered by RUS and by the applicant, RUS reserves the right to require any changes in the project or legal documents covering the project to protect the integrity of the program and the interests of the government.

(g) If the applicant fails to submit, within 120 calendar days from the date of RUS' selection of an application, all of the information that RUS determines to be necessary to prepare legal documents and satisfy other requirements of this subpart, RUS may rescind the selection of the application and written notice of such rescission will be sent promptly to the applicant.

§§ 1703.123—1703.125 [Reserved]

§ 1703.126 Disbursement of loan and grant funds.

(a) For financial assistance of $100,000 or greater, prior to the disbursement of funds, the recipient, if it is not a unit of government, will provide evidence of fidelity bond coverage as required by 7 CFR part 3019.

(b) Financial assistance will be disbursed to recipients on a reimbursement basis, or with unpaid invoices for the eligible purposes set forth in this subpart, by the following process:

(1) An SF 270, ''Request for Advance or Reimbursement,'' will be completed by the recipient and submitted to RUS not more frequently than once a month;

(2) After receipt of a properly completed SF 270, RUS will review for accuracy and if the form is satisfactory will schedule payment. Payment will ordinarily be made within 30 days; and

(3) For financial assistance approved during and subsequent to FY 1997, funds will be advanced in accordance to 7 CFR 1744.69.

(c) The recipient's share in the cost of the project will be disbursed in advance of financial assistance, or if the recipient agrees, on a pro rata distribution basis with financial assistance during the disbursement period. Recipient will not be permitted to provide its contribution at the end of the project.

(d) Concurrent grant and loan funds will be disbursed on a pro rata distribution basis.

§ 1703.127 Reporting and oversight requirements.

(a) A project performance activity report will be required of all recipients on an annual basis until the project is complete and the funds are disbursed by the applicant.

(b) A final project performance report will be required. It must provide an evaluation of the success of the project in meeting the objectives of the program. The final report may serve as the last annual report.

(c) RUS will monitor recipients as it determines necessary to assure that projects are completed in accordance with the approved scope of work and that funds are expended for approved purposes.

(d) Recipients shall diligently monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. Recipients are to submit an original and one copy of all reports submitted to RUS. The project performance reports shall include, but not be limited to, the following:

(1) A comparison of actual accomplishments to the objectives established for that period;

(2) A description of any problems, delays, or adverse conditions which have occurred, or are anticipated, and which may affect the attainment of overall project objectives, prevent the meeting of time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation; and

(3) Objectives and timetable established for the next reporting period.

§ 1703.128 Audit requirements.

(a) The grant recipients and DLT borrowers will provide an audit report in accordance with either:

(1) 7 CFR part 3051, Audits of Institutions of Higher Education and Other Nonprofit Institutions, or its successor; or

(2) 7 CFR part 1773, Policy on Audits of RUS Borrowers.

(b) 7 CFR part 3051 applies to not-for-profit organizations (including hospitals, colleges and universities) and state, local, and Indian tribal governments. 7 CFR part 1773 applies to for-profit organizations receiving grants or loans, and all RUS telecommunications and electric borrowers receiving cost of money loans.

(c) For grant recipients the audit requirements only apply to the year(s) in which grant funds are expended. For DLT borrowers the audit requirements apply until the loan is repaid.

§ 1703.129 Repayment of loans.

The term of cost of money loans will be based on the economic useful life of the facilities to be financed, not to exceed 10 years. If the recipient requests, a one year deferment of principal will be included. In special hardship cases, which the recipient must justify, RUS may approve a two year deferment of principal. Interest on the loan will be due and payable during the principal deferral period. RUS will establish uniform debt service payments based on the total amortization period.

§§ 1703.130–1703.134 [Reserved]

§ 1703.135 Grant and loan administration.

(a) RUS will review recipients as necessary to determine whether funds were expended for approved purposes. The recipient is responsible for ensuring that the project complies with all applicable regulations, and that the financial assistance is expended only for approved purposes. The recipient is responsible for ensuring that disbursements and expenditures of funds are properly supported by invoices, contracts, bills of sale, canceled checks, or other appropriate forms of evidence, and that such supporting material is provided to RUS, upon request, and is otherwise made available, at the recipient's premises, for review by the RUS representatives, the recipient's certified public accountant, the office of Inspector General, U.S. Department of Agriculture, the General Accounting Office and any other officials conducting an audit of the recipient's financial statements or records, and program performance for the financial assistance awarded under this subpart. The recipient will be required to permit RUS to inspect and copy any records and documents that pertain to the project.

(b) Grants provided under this program will be administered under, and are subject to 7 CFR parts 3016 through 3019 or their successor, as appropriate. 7 CFR parts 3016 and 3019 subject grantees to a number of requirements which cover, among other things, financial reporting, accounting records, budget controls, record retention and audits, bonding and insurance, cash depositories for grant funds, grant related income, use and disposition of real property and equipment purchased with grant funds, procurement standards, allowable costs for grant related activities, and grant close-out procedures.

§ 1703.136 Changes in project objectives or scope.

The recipient will obtain prior approval for any material change to the scope or objectives of the approved project, including changes to the scope of work or budget. Failure to obtain prior approval of changes may result in suspension or termination of funds.

§ 1703.137 Grant and loan termination provisions.

(a) *Termination for cause.* RUS may terminate any financial assistance in whole, or in part, at any time before the date of completion of funding disbursement, whenever it is determined that the recipient has failed to comply with the conditions of the financial assistance. RUS will promptly notify the recipient in writing of the determination and the reasons for the termination, together with the effective date.

(b) *Termination for convenience.* RUS or the recipient may terminate financial assistance in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with further expenditure of funds. The two parties will agree upon termination conditions, including the effective date, and in the case of partial termination's, the portion to be terminated. The recipient will not incur new obligations for the terminated portion after the effective date, and will cancel as many outstanding obligations as possible. RUS will allow full credit to the applicant for the Federal share of the noncancelable obligations, properly incurred by the recipient prior to termination.

§§ 1703.138–1703.139 [Reserved]

§ 1703.140 Expedited telecommunications loans.

General. RUS will expedite consideration and determination of an application for a loan or a request for advance of funds submitted by an RUS telecommunications borrower that supports the project seeking financial assistance under this subpart. See 7 CFR part 1737 for loans and 7 CFR part 1744 for advances under this section.

Appendix A to Subpart D of Part 1703—Environmental Questionnaire

Note: It is extremely important to respond to all questions completely to ensure expeditious processing of the Distance Learning and Telemedicine application. The information herein is required by Federal law.

Important: Any activity related to the project that may adversely affect the environment or limit the choice of reasonable development alternatives shall not be undertaken prior to the completion of Rural Utilities Service's environmental review process.

Legal Name of Applicant ________________

Signature

(Type/Sign/Date) ______________________

The applicant's representative certifies, to the best of his/her knowledge and belief, that the information contained herein is accurate. Any false information may result in disqualification for consideration of the loan or grant or rescission of the loan or grant.

I. Project Description—Detailing construction, including, but not limited to, internal modifications of existing structures, and installation of telecommunications transmission facilities (defined in 7 CFR 1703.102), including satellite uplinks or downlinks, microwave transmission towers, and cabling.

1. Describe the portion of the project, and site locations (including legal ownership of real property), involving internal modifications, or equipment additions to buildings or other structures (e.g., relocating interior walls or adding computer facilities) for each site.

2. Describe the portion of the project, and site locations (including legal ownership or real property), involving construction of transmission facilities, including cabling, microwave towers, satellite dishes; or, disturbance of property of .99 acres or greater for each project site.

3. Describe the nature of the proposed use of the facilities, and whether any hazardous materials, air emissions, wastewater discharge or solid waste will result.

4. State whether or not any project site(s) contain or are near properties listed or eligible for listing in the National Register of Historic Places, and identify any historic properties (The applicant must supply evidence that the State Historic Preservation Officer (SHPO) has cleared development regarding any historical properties).

5. Provide information whether or not any facility(ies) or site(s) are located in a 100-year floodplain. A National Flood Insurance Map should be included reflecting the location of the project site(s).

II. For projects which involve construction of transmission facilities, including cabling, microwave towers, satellite dishes, or physical disturbance of real property of .99 acres or greater, the following information must be submitted (7 CFR 1703.109(i)(3)).

1. A map (preferably a U.S. Geological Survey map) of the area for each site affected by construction (include as an attachment).

2. A description of the amount of property to be cleared, excavated, fenced or otherwise disturbed by the project and a description of the current land use and zoning and any vegetation for each project site affected by construction.

3. A description of buildings or other structures (i.e., transmission facilities), including dimensions, to be constructed or modified.

4. A description of the presence of wetlands or existing agricultural operations and threatened or endangered species or critical habitats on or near the project site(s) affected by construction.

5. Describe any actions taken to mitigate any environmental impacts resulting from the proposed project (use attachment if necessary).

Note: The applicant may submit a copy of any environmental review, study, assessment, report or other document that has been prepared in connection with obtaining permits, approvals or other financing for the proposed project from State, local or other Federal bodies. Such material, to the extent relevant, may be used to meet the requirements herein.

Dated: June 9, 1997.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 97–15536 Filed 6–12–97; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Distance Learning and Telemedicine Loan and Grant Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice; maximum amount of financial assistance available and minimum number of points required for a loan.

SUMMARY: The rural Utilities Service is announcing the maximum amount of financial assistance to be made available to an individual recipient, and the minimum number of points required for a loan application to be immediately processed for fiscal year (FY) 1997 for the Distance Learning and Telemedicine Loan and Grant Program.

EFFECTIVE DATE: June 13, 1997.

SUPPLEMENTARY INFORMATION: In accordance with 7 CFR 1703.108, RUS has determined the maximum amount of an application for a grant that will be considered for funding during FY 1997 as $300,000, and the maximum amount for a loan that will be considered for funding during FY 1997 as $3,000,000.

RUS has also determined that for FY 1997 the minimum number of points required for a loan application to be immediately processed is 94 points (7 CFR 1703.113). Only completed applications meeting the minimum points requirement and determined by RUS to be feasible will be immediately processed.

Authority: 7 U.S.C. 901 *et seq.* and 950aaa *et seq.*, Pub. L. 103–354, 108 Stat 3178 (7 U.S.C. 6941 *et seq.*).

Dated: June 10, 1997.

Wally Beyer,

Administrator, Rural Utilities Service.

[FR Doc. 97–15585 Filed 6–12–97; 8:45 am]

BILLING CODE 3410–15–M

federal register

Friday
June 13, 1997

Part VI

Environmental Protection Agency

40 CFR Parts 260, 264, 265, and 266

Hazardous Waste Management System; Testing and Monitoring Activities; Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 264, 265, and 266

[EPA F–97–WT3F–FFFFF; FRL–5839–6]

Hazardous Waste Management System; Testing and Monitoring Activities

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is amending its hazardous waste regulations for testing and monitoring activities. This amendment adds new and revised methods as Update III to the Third Edition of the EPA-approved test methods manual ''Test Methods for Evaluating Solid Waste, Physical/ Chemical Methods,'' EPA Publication SW–846 and deletes several obsolete methods from SW–846 and the RCRA regulations. It also incorporates SW–846, Third Edition, as amended by Updates I (July 1992), II (September 1994) and IIA (August 1993 as part of the wood surface protection rule), IIB (January 1995, clarifying the temperature requirement for pH measurements of highly alkaline wastes), and III (December 1996). The intent of this action is to provide state-of-the-art analytical technologies for RCRA-related testing, thus promoting cost effectiveness and flexibility in choosing analytical test methods, as well as clarifying the RCRA Program's approach to working towards the Performance Based Measurement System (PBMS). Incorporation by reference was approved for the updates on the following dates: Update I, August 31, 1993, Update II, January 13, 1995, Update IIA, January 4, 1994 as part of the wood surface protection rule, and Update IIB, April 4, 1995, clarifying the temperature requirement for pH measurements of highly alkaline wastes.

DATES: This action is effective as of June 13, 1997. The incorporation by reference of the publication listed in the regulations is approved by the Director of the Federal Register as of June 13, 1997.

ADDRESSES: Supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Docket Identification Number is F–97–WT3F–FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. All comments received are in the docket for the proposed rule (Docket No. F–95–WT3P–FFFFF). Summaries of the comments together with the Agency's responses are in ''Response to Public Comments Background Document, Promulgation of the Third Update to SW–846, Third Edition'' which is in the docket for this final rule (Docket No. F–97–WT3F–FFFFF). To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages of material from any regulatory docket at no charge. Additional copies cost $0.15 per page. The docket index and rule are available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing it.

Copies of the Third Edition of SW–846, as amended by Updates I, II, IIA, IIB, and III, are part of the official docket for this rulemaking, and also are available from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402, (202) 512–1800. The GPO document number is 955–001–00000–1. Copies of the Third Edition integrated manual and its updates are also available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 487–4650. The Third Edition integrated manual order number is PB95264073, and the Final Update III order number is PB97156137.

In addition, a CD–ROM version of SW–846, Third Edition, as amended by Updates I through IIB, is available from NTIS. In the future, the CD–ROM will be updated by NTIS to also include Update III to SW–846.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For more detailed information on specific aspects of this rulemaking, contact Kim Kirkland, Office of Solid Waste (5307W), U. S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 308–8855.

SUPPLEMENTARY INFORMATION: The docket index and the rule are available on the Internet. Follow these instructions to access the information electronically: From the World Wide Web (WWW), type WWW: http:// www.epa.gov/epaoswer/rules.htm.

Regulated Entities

Entities potentially regulated by this action are those required to use SW–846 test methods during waste sampling and analysis for RCRA-related activities. Regulated categories and entities include: Industry (e.g., companies which handle hazardous wastes), and State, local and Federal government entities (e.g., government entities which handle hazardous wastes). Other entities not listed could also be regulated. To determine whether your organization is regulated by this action, you should carefully examine the applicability criteria in parts 260 through 299 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Preamble Outline

I. Legal Authority

These regulations are being promulgated under the authority of sections 1006, 2002(a), 3001–3007, 3010, 3013–3018, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery

Act of 1976 (commonly known as RCRA), as amended (42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934–6939, and 6974).

II. Background Summary and Regulatory Framework

EPA Publication SW–846, ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' contains the analytical and test methods that EPA has evaluated and found to be among those acceptable for testing under subtitle C of the Resource Conservation and Recovery Act (RCRA), as amended. Use of some of these methods is required by some of the hazardous waste regulations under subtitle C of RCRA. In other situations, SW–846 functions as a guidance document setting forth acceptable, although not required, methods to be implemented by the user, as appropriate, in satisfying RCRA-related sampling and analysis requirements. All of these methods are intended to promote accuracy, sensitivity, specificity, precision, and comparability of analyses and test results.

SW–846 is a document that changes over time as new information and data are developed. Advances in analytical instrumentation and techniques are continually reviewed by the Agency's Office of Solid Waste (OSW) and periodically incorporated into SW–846 to support changes in the regulatory program and to improve method performance and cost effectiveness. Update III represents such an incorporation.

As a result of this final rule, SW–846 is being amended further to include the new and revised methods contained in Update III, and to delete those methods deemed obsolete.

III. Overview of July 25, 1995 NPRM and Summary of Responses to Public Comments

A. Overview of Proposal

On July 25, 1995 (60 FR 37974), the Agency proposed to amend its hazardous waste testing and monitoring regulations under subtitle C of RCRA by: (1) Adding revised methods and chapters and new methods as Update III to SW–846 and incorporating the Third Edition of SW–846 as amended by Updates I, II, IIA, IIB, and III, into 40 CFR 260.11(a) for use in complying with the requirements of subtitle C of RCRA, (2) deleting certain methods from SW–846 which are deemed obsolete, and (3) deleting certain references to Method 8240, Volatile Organics by Gas Chromatography/Mass Spectrometry (GC/MS), found in 40 CFR 264.1034, 264.1063, 265.1034, and 265.1063.

The Agency solicited comments on each of these proposed changes. On December 22, 1995 (60 FR 49239), the Agency extended the comment period to allow resolution of problems involving the shipping of Proposed Update III to many SW–846 subscribers. The extension allowed the subscribers an opportunity to review the Proposed Update III package and supply comments to the Agency.

Items B through D of this section summarize the major comments received and the actions taken by the Agency in response to those comments.[1]

B. Responses to Comments Regarding the Addition of Update III Methods and Chapters to SW–846

The Agency proposed, as part of Update III to SW–846, to revise 37 methods and 6 chapters already contained in the Third Edition of SW–846, as amended by Updates I, II, IIA, and IIB, incorporated by reference in 40 CR 260.11. The revisions were proposed to improve the methods and provide additional performance information for these methods. As part of Update III, the Agency also proposed to add 61 new methods to SW–846.

The Agency received very few negative comments on the proposal to add the new methods and revised methods and chapters of Update III to SW–846. The comments received by the Agency on the addition of new methods and the revision of existing methods and chapters were minor editorial changes. Details on these comments and the Agency's responses may be found in the background document to this rulemaking. The Agency has incorporated several of the suggested changes into the Update III package, as described in the background document.

C. Deletion of Obsolete Methods

The Agency proposed, as part of Update III to SW–846, to delete sixteen obsolete methods from the Third Edition of SW–846, for the reasons delineated in the sections to follow. Table 1 (Method Deletion/Replacement Table) lists the methods being deleted and identifies the appropriate replacement methods currently found in SW–846, Third Edition, as amended by Updates I, II, IIA, IIB, and III. The replacement methods are approved for analyses previously conducted by the deleted methods. Regarding the deletion of packed-column methods from SW–846, the Agency notes that packed columns can still be used in the replacement capillary column methods for required purposes, provided that method performance is appropriate for the intended application.

TABLE 1

[Method Deletion/Replacement Table][1]

Deleted method No.	Deleted method title	Replacement method No.	Replacement method title
5040A	Analysis of Sorbent Cartridges from Volatile Organic Sampling Train (VOST): Gas Chromatography/Mass Spectrometry Technique.	5041A	Analysis for Desorption of Sorbent Cartridges from Volatile Organic Samp-ling Train (VOST).
8010B	Halogenated Volatile Organics by Gas Chromatography	8021B	Halogenated and Aromatic Volatiles by Gas Chromatography Using Photoionization and Electrolytic Conductivity Detectors.
8020A	Aromatic Volatile Organics by Gas Chromatography	8021B	Halogenated and Aromatic Volatiles by Gas Chromatography Using Photoionization and Electrolytic Conductivity Detectors.
8030A	Acrolein and Acrylonitrile by Gas Chromatography	8260B	Volatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS).
		8316	Acrylamide, Acrylonitrile and Acrolein by High Performance Liquid Chromatography (HPLC).

[1] All comments received are in the docket for the proposed rule (Docket No. F–95–WT3P–FFFFF). Summaries of the comments together with the Agency's responses are in ''Response to Public Comments Background Document, Promulgation of the Third Update to SW–846, Third Edition'' which is in the docket for this final rule (Docket No. F–97–WT3F–FFFFF).

TABLE 1—Continued

[Method Deletion/Replacement Table][1]

Deleted method No.	Deleted method title	Replacement method No.	Replacement method title
8040A	Phenols by Gas Chromatography	8041	Phenols by Gas Chromatography.
8060	Phthalate Esters	8061A	Phthalate Esters by Gas Chromatography with Electron Capture Detection (GC/ECD).
8080A	Organochlorine Pesticides and Polychlorinated Biphenyls by Gas Chromatography.	8081A	Organochlorine Pesticides by Gas Chromatography.
		8082	Polychlorinated Biphenyls (PCBs) by Gas Chromatography.
8090	Nitroaromatics and Cyclic Ketones	8091	Nitroaromatics and Cyclic Ketones.
8110	Haloethers by Gas Chromatography	8111	Haloethers by Gas Chromatography.
8120A	Chlorinated Hydrocarbons by Gas Chromatography	8121	Chlorinated Hydrocarbons by Gas Chromatography.
8140	Organophosphorus Pesticides	8141A	Organophosphorus Com-pounds by Gas Chromatography.
8150B	Chlorinated Herbicides by Gas Chromatography	8151A	Chlorinated Herbicides by GC Using Methylation or Pent-aflorobenzylation Derivatization.
8240B	Volatile Organics by Gas Chromatography/Mass Spectrometry (GC/MS)	8260B	Volatile Organic Compounds by Gas Chromatography/ Mass Spectrometry (GC/MS).
8250A	Semivolatile Organic Compounds by Gas Chromatography/ Mass Spectrometry (GC/MS).	8270C	Semivolatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS).
9200	Nitrate	9210	Potentiometric Determination of Nitrate in Aqueous Samples with Ion-Selective Electrode.
		9056	Determination of Inorganic Anions by Ion Chromatography.
9252A	Chloride (Titrimetric, Mercuric Nitrate)	9056	Determination of Inorganic Anions by Ion Chromatography.
		9250	Chloride (Colormetric, Automated Ferricyanide AAI).
		9251	Chloride (Color-metric, Automated Ferricyanide AAII).
		9253	Chloride (Titrimetric, Silver Nitrate).

[1] The Agency notes that packed columns can still be used in the replacement capillary column methods for required purposes, provided that method performance is appropriate for the intended application. The analysts should also see the Preface and Overview and Chapter Two of SW–846, as well as Method 8000 before beginning any GC analysis (Note: A more detailed discussion on this issue can be found in Section III. C.1 of the preamble).

Note: A suffix of ''A'' in the method number indicates revision one (the method has been revised once). A suffix of ''B'' in the method number indicates revision two (the method has been revised twice). A suffix of ''C'' in the method number indicates revision three (the method has been revised three times).

1. Deletion of Packed Column Gas Chromatographic Methods

Fourteen packed column gas chromatographic (GC) methods were proposed for deletion from SW–846 because they have been superseded by capillary column methods or other method techniques that provide better resolution, selectivity and sensitivity. Most of the commenters did not comment on the proposal to remove the packed column methods from SW–846. Of those that did, four commenters were in favor of the removal of the packed column methods, while thirteen opposed the action. In general, both sets of commenters agreed with the Agency that most laboratories use capillary columns, and that capillary columns are a better technology and generate more reliable data than the packed columns. However, all of those opposing the action preferred that the Agency retain the packed column methods as approved for RCRA-related testing and considered their deletion from SW–846 to be either arbitrary or unnecessary. These commenters noted that the capillary columns can be and are used in the packed column methods. The commenters stated that, since SW–846 is a guidance document, the regulated community should have the option of using the packed column methods as long as the generated data are adequate for regulatory purposes. Some commenters in particular desired this option regarding the use of Method 8080, ''Organochlorine Pesticides and Polychlorinated Biphenyls by Gas Chromatography''.

First, the Agency disagrees with comments that removal of the packed column methods is arbitrary or unnecessary. It is the Agency's responsibility to maintain SW–846 as a manual of standardized methods which EPA believes will provide adequate data for compliance determinations and other RCRA-related analyses. As noted in the proposal (and also observed by the commenters), capillary columns have an inherently greater ability to separate analytes than packed columns. No commenters refuted this finding. In addition, a survey performed in 1991 found that few analysts actually use packed columns in their laboratories anymore (Environmental Science and Technology, 26, 1285–1287, 1992).

The packed column GC methods of SW–846 were also proposed for deletion to be consistent with other Agency program offices, e.g., the Office of Water, which has withdrawn packed column methods from its list of approved drinking water methods (see 59 FR 62456, December 5, 1994). The Agency is also considering a similar action regarding the methods approved for wastewater analyses. Cross-program consistency regarding the use and approval of packed column methods is important and cost-effective for both the Agency and the regulated community.

In addition, as shown by Table 1, the Agency is not proposing to delete a packed column method unless at least one other method which uses a commercially available and adequate technology is in SW–846 to replace it.

Regarding the continued use of any of the packed column methods by the regulated community, the Agency notes that packed columns can still be used in the replacement capillary column methods for required purposes, provided that method performance is appropriate for the intended application. The performance data included in SW–846 methods are not intended to be used as absolute QC acceptance criteria for method performance. The data are intended as guidance providing typical method performance in typical matrices, to assist the analyst in the selection of an appropriate method for the intended application. It is the analyst's responsibility to establish the analytical operating parameters and acceptance criteria that are appropriate for that intended application. In addition, the public may continue to use packed column methods, including Method 8080, for applications for which the methods are appropriate.

Some commenters opposed the deletion of the packed column methods because many of the methods are included in formally approved documents such as permits, EPA-approved Quality Assurance Project Plans, and Consent Decrees. This should not be a cause for concern. Permits and other plans formally approved by regulatory authorities that specify the use of packed column methods for required analyses continue in effect unless they are changed, for example, by amending a consent decree or modifying a permit. In addition, when the permits, etc., are revised, the performance data contained in the packed column methods are not intended to be used as absolute QC acceptance criteria. As with any other methods in SW–846, they are typical performance data expected for typical matrices. The replacement capillary column methods provide superior performance with regard to sensitivity, chromatographic separation, etc., and therefore, the Agency does not believe that amending a permit will be a problem or expense because equivalent methods are already included in SW–846 to meet the analytical requirements stated in permits. Further, the Agency believes that laboratories have been using capillary column methods for these RCRA applications.

The removal of the packed column methods is a direct example of the Agency's interpretation of PBMS. Capillary column methods represent state-of-the-art in Gas Chromatography technology. Under the PBMS approach, the Agency requires that the generator/analyst be able to demonstrate the ability to meet the Data Quality Objectives (DQOs) for any particular application. For those isolated instances for which the analyst wishes to use a packed column method and can demonstrate the ability to meet project specific DQOs for a particular RCRA application, packed column methods may continue to be used. It is the Agency's policy under the Performance-Based Measurement System (PBMS), that the analytical performance criteria established in the RCRA permit be achieved. The Environmental Monitoring Management Council (EMMC) defines PBMS as ''a set of processes wherein the data quality needs, mandates or limitations of a program or project are specified, and serve as criteria for selecting appropriate methods to meet those needs in a cost-effective manner.'' Under such a system, EPA would specify performance criteria and data producers that would show that their proposed methods meet these specific performance standards. Data producers would be required to document method performance and certify the use of appropriate quality assurance and quality control procedures. The system would apply to those physical, chemical, and biological methods used both in laboratories and in the field. PBMS is a system for specifying monitoring requirements that imposes legal accountability for the achievement of specific data or measurement quality objectives, without prescribing the particular procedures, techniques, or instrumentation that is to be used for achieving such objectives. These performance criteria are defined by the permit, not by a specified method number.

2. Deletion of Methods 9200 and 9252A

The Agency also proposed to delete Method 9200 (the brucine-sulfanilamide method for nitrate determination), because it generated unreliable results, and Method 9252A (''Chloride, Titrimetric, Mercuric Nitrate), because it generates a mercury-containing RCRA hazardous waste. The Agency did not receive any comments regarding the deletion of these two methods. Therefore, Methods 9200 and 9252 have been deleted and are no longer part of the Third Edition of SW–846 as revised by Final Update III.

3. Replacing References to Method 8240 With References to Method 8260 in §§ 264.1034(d)(1)(iii) and (f), 264.1063(d)(2), 265.1034(d)(1)(iii) and (f), and 265.1063(d)(2)

The Agency proposed to delete all references to Method 8240 (Volatile Organic Compounds by Gas Chromatography/Mass Spectrometry) of SW–846 found in §§ 264.1034(d)(1)(iii) and (f), 264.1063(d)(2), 265.1034(d)(1)(iii) and (f), and 265.1063(d)(2). The Agency did not propose to replace the references to Method 8240 with references to Method 8260 of SW–846, the capillary column replacement method for Method 8240. There were no significant comments objecting to the removal of references to Method 8240 in those sections. However, there was comment that the compound-specific methodology should not be discontinued, leaving only a method that measures total organic concentration. Rather, the preferred capillary column technology should be used in place of the former packed column technology in the analysis of volatile organic compounds by Gas Chromatography/Mass Spectrometry; i.e., Method 8240 should be replaced by Method 8260 in the subject regulations. The Agency agrees with this comment and therefore has replaced references to Method 8240 with references to Method 8260 in 40 CFR 264.1034(d)(1)(iii) and (f), 264.1063(d)(2), 265.1034(d)(1)(iii), and 265.1063(d)(2) and (f) of the RCRA regulations. As stated in method 8000B, ''Determinative Chromatographic Separations'', the method which provides the Agency's guidance on analytical chromatography, other columns may be substituted in SW–846 methods to improve performance provided that (1) the requirements of Secs. 8.3 (Instrument QC Requirements) and 8.4 (Initial Demonstration of proficiency) of Method 8000B are satisfied, and (2) Target analytes are sufficiently resolved from one another, and from co-extracted interferences.

(Note: A method reference found within the RCRA regulations refers to the latest promulgated revision of the method, even though the method number does not include the appropriate letter suffix. For example, in the regulatory sections discussed above, the referenced Method 8260 refers to the last promulgated version of that method, which is Method 8260B of Update III to SW–846.)

IV. Additional Editorial Changes

The Agency is taking this opportunity to make several additional editorial changes resulting from the promulgation of Update III to SW–846, Third Edition. These changes include:

—Revising Methods 9010A and 9030A to create new modular format Methods 9010B, 9030B, 9014, and 9034, and Editorial Changes to Chapter Seven.

—Removing section 3.0, ''Sampling and Analytical Methods'', from appendix IX to 40 CFR part 266 because all of the methods can now be found in SW–846.

—Revising footnote 5 of appendix IX to 40 CFR part 264 to address the status of packed column methods in SW–846.

—Revising the Disclaimer and Chapter Two of SW–846 to include clarifying editorial changes regarding flexibility allowed during the use of SW–846 methods.

Since these are technical changes that do not affect the implementation of the regulations, the Agency is simply providing notice of the changes without opportunity for public comment.[2] These changes are discussed in detail below.

A. Changes to Methods 9010A and 9030A to Create New Modular Format Methods 9010B, 9030B, 9014, and 9034; and Editorial Changes to Chapter Seven

Methods 9010B (Total and Amenable Cyanide: Distillation), 9014 (Titrimetric and Manual Spectrophotometric Determinative Methods for Cyanide), 9030B (Acid Soluble and Acid-Insoluble Sulfides: Distillation), and 9034 (Titrimetric Procedure for Acid-Soluble and Acid Insoluble Sulfides) of Update III are modular versions of the inclusive Methods 9010A (Total and Amenable Cyanide) and 9030A (Acid-Soluble and Acid-Insoluble Sulfides) of SW–846. The modular versions were created by dividing the preparative and determinative steps of Methods 9010A and 9030A into four separate methodologies. Specifically, revised Method 9010B contains the preparative distillation steps of Method 9010A, and revised Method 9030B contains the preparative distillation steps of Method 9030A. New Method 9014 contains the determinative steps of Method 9010A, and new method 9034 contains the determinative steps of Method 9030A. This modular approach is common to SW–846, and increases flexibility by allowing the selection of preparative and determinative steps that are appropriate to the sample matrix and data end use. (Inclusive methods are desirable, when practicable, i.e., for a specific application in a specific medium or matrix. However, modular methods are more appropriate and practicable when dealing with analyses involving multiple media, as is the case with these two methods.) The text and technical content of Methods 9010A and 9030A were not changed when the methods were divided into Methods 9010B, 9014, 9030B, and 9034.

As a result of dividing Methods 9010 and 9030 into two new methods, the Agency is also correcting those method references in Chapter Seven, steps 2.1, 7.6, and 8.1 of section 7.3.3.2 (Test Method to Determine Hydrogen Cyanide Released from Wastes) and steps 2.1, 7.6, 7.7 and 9.1 of section 7.3.4.2 (Test Method to Determine Hydrogen Sulfide Released from Wastes). Specifically, certain incorrect references to ''Method 9010'' and ''Method 9030'' have been replaced with correct references to ''Method 9014'' and ''Method 9034''.

B. Revision of Section 3.0 (Sampling and Analytical Methods) of Appendix IX to 40 CFR Part 266

The Agency has revised appendix IX of 40 CFR part 266 whereby the text of section 3.0, Sampling and Analytical Methods, has been removed, and a note has been added referencing SW–846. With the promulgation of Update III, all of the methods in section 3.0 of part 266, appendix IX, are now available in SW-846. Table 2 (BIF/EPA Methods) identifies the methods in section 3.0 of part 266, appendix IX, and the equivalent SW–846 method. (Note: The method number has changed for some of the methods to reflect the SW–846 method numbering system.) This technical change was necessary to eliminate redundancy and to remove the possibility that a discrepancy might exist between two versions of the same method. This technical change only revises where the methods are found; it does not change required or intended uses of the methods.

Since these methods have been removed from appendix IX of part 266 and replaced with a note referencing SW–846, and since §§ 266.104(e)(1), 266.106(g) (1) and (2), and 266.107(f) refer (directly or indirectly) to the methods in that appendix, the Agency has also revised §§ 266.104(e)(1), 266.106(g) (1) and (2), and 266.107(f) to refer to the equivalent methods of SW–846.

TABLE 2

[BIF/EPA Methods]

BIF manual section	BIF manual method name	BIF method No.	SW–846 method No.
3.1	Methodology for the Determination of Metals Emissions In Exhaust Gases from Hazardous Waste Incineration and Similar Combustion Processes.	0012	0060
3.2	Determination of Hexavalent Chromium Emissions from Stationary Sources	0013	0061
3.3.1	Isokinetic HCl/Cl_2 Emission Sampling Train	0050	0050
3.3.2	Midget Impinger HCl/Cl_2 Emission Sampling Train	0051	0051
3.3.3	Protocol for Analysis of Samples from HCl/Cl_2 Emission Sampling Train	9057	9057
3.4	Determination of Polychlorinated Dibenzo-p-Dioxins (PCDDs) and Polychlorinated Dibenzofurans (PCDFs) from Stationary Sources.	23	0023
3.5	Sampling for Aldehydes and Ketones Emissions From Stationary Sources	0011	0011
3.6	Analysis for Aldehydes and Ketones by High Performance Liquid Chromatography (HPLC)	0011A	8315

C. Revision of Footnote 5 of Appendix IX to 40 CFR Part 264

Appendix IX to 40 CFR part 264 contains the ground-water monitoring list of analytes and suggested methods for analyte determination. Footnote 5 to the appendix notes that the listing of suggested methods refers to analytical procedure numbers used in SW–846. However, the listing of suggested methods includes packed column GC methods, which have been removed from SW–846 with the addition of Update III. The Agency, therefore, has revised footnote 5 of appendix IX to 40 CFR part 264 to also note that the packed column methods were promulgated methods through Update IIB of SW–846 and that, as of Update III, the Agency has replaced the methods with capillary column GC methods.

D. Removing the 47 Analytical Test Methods Incorporated by Reference in § 260.11(a)

The Agency is today removing the list of 47 methods found at the end of

[2] The APA provides an exception to the notice and comment requirement where it would be unnecessary. 5 U.S.C. 553(b)(3)(B).

§ 260.11(a). This action is being taken since the 47 methods are contained in the Third Edition of SW–846, which is being incorporated by reference today in its entirety. Therefore, specific reference to the 47 methods in § 260.11, Incorporation by Reference, is redundant and unnecessary. It was the intent of the Agency to finalize this action in a previous rulemaking (August 31, 1993, 58 FR 46040). However, due to an error in the regulatory language contained in that rule, the 47 methods were not removed from § 260.11(a) at that time.

E. Revising the Disclaimer and Chapter Two of SW–846 to Include Clarifying Editorial Changes Regarding Flexibility Allowed During the Use of SW–846 Methods

The Agency believes that language in SW–846 which clarifies the flexibility inherent to SW–846 methods is useful to the regulated community. SW–846 methods are written so that they may be used as quantitative trace analytical methods to demonstrate that a waste ''does not contain'' constituents that require it to be managed as a hazardous waste. If particular RCRA applications do not require this rigor, looser analytical criteria may be applied, provided that they satisfy the data quality requirements for the particular application. Therefore, the Agency has revised the Disclaimer and Chapter Two of SW–846 to include editorial changes which explain that glassware, reagents, supplies, equipment and settings other than those specified in SW–846 may be employed, provided that method performance appropriate for the intended RCRA application is documented. Such performance includes consideration of precision, accuracy (or bias), recovery, representativeness, comparability, and sensitivity (detection, quantitation, or reporting limits) relative to the data quality objectives for the intended use of the analytical results. In other words, the Agency is following a Performance-Based Measurement System (PBMS) approach where the analyst must be able to demonstrate the ability to determine the analytes of concern in the matrix(ces) of concern at the level (concentration) of concern for any particular RCRA application. RCRA regulations basically specify ''what'' needs to be determined and leaves the ''how'' up to the analyst. ''Any reliable analytical method'' may be used for this demonstration. If in response to this inherent flexibility an alternative analytical procedure is employed, the laboratory should demonstrate and document that the procedure is capable of providing the appropriate performance. The Disclaimer and Chapter Two explain that the performance data included in the SW–846 methods are not intended to be used as absolute QC acceptance criteria for method performance. The data are intended to only be guidance, by providing typical method performance in certain representative matrices to assist the analyst in the selection of an appropriate method for an intended RCRA application.

The flexibility described in the Disclaimer and Chapter Two of SW–846 is applicable when any regulating entity (e.g., State Government) specifies the use of methods found in SW–846. The following language from the Preface and Overview should help clarify the flexibility inherent in the SW–846 manual:

> The procedures described in this manual are meant to be comprehensive and detailed, coupled with the realization that the problems encountered in sampling and analytical situations require a certain amount of flexibility. The solutions to these problems will depend, in part, on the skill, training, and experience of the analyst. For some situations, it is possible to use this manual in rote fashion. In other situations, it will require a combination of technical abilities, using the manual as guidance rather than in a step-by-step, word-by-word fashion. Although this puts an extra burden on the user, it is unavoidable because of the variety of sampling and analytical conditions found with hazardous wastes.

However, as explained in the Disclaimer and Chapter Two, this flexibility does *not* apply to method-defined parameters where the analytical result is wholly dependant on the measurement process, such as during the use of the Toxicity Characteristic Leaching Procedure (Method 1311) and other characteristic tests. In these instances, changes to the specific methods may change the end result and incorrectly identify a waste as non-hazardous. Therefore, when the measurement of such method-defined parameters is required by regulation, those methods are *not* subject to the flexibility afforded to other methods.

V. Overview of Final Rule

This rule makes final the Agency's proposal to remove certain methods and add revised methods and chapters and new methods as Update III to SW–846 and to incorporate the Third Edition as amended by Updates I, II, IIA, IIB, and III in 40 CFR 260.11(a) for use in complying with the requirements of subtitle C of RCRA.

Table 3, Final Update III of SW–846, Third Edition lists all of the revised methods and chapters and new methods that are approved by the Agency for inclusion in Final Update III to SW–846. The table lists the chapters and methods of Update III in the order of their relative location in SW–846. The vertical ''* * *'' notation indicates portions of SW–846, Third Edition (as amended by Updates I, IIA, and IIB) which are unchanged by Final Update III.

TABLE 3.—FINAL UPDATE III OF SW–846, THIRD EDITION

Method No.	Title
	Disclaimer.
*	* * * * * *
	Table of Contents.
*	* * * * * *
	Preface.
*	* * * * * *
	Chapter Two—Choosing the Correct Procedure.
	Chapter Three—Inorganic Analytes.
	3.1 Sampling Considerations.
	3.2 Sample Preparation Methods.
*	* * * * * *
3031	Acid Digestion of Oils for Metals Analysis by FLAA or ICP Spectroscopy.

TABLE 3.—FINAL UPDATE III OF SW–846, THIRD EDITION—Continued

Method No.	Title
3040A	Dissolution Procedures for Oils, Greases, or Waxes.
3050B	Acid Digestion of Sediments, Sludges, and Soils.
3052	Microwave Assisted Acid Digestion of Siliceous and Organically Based Matrices.
3060A	Alkaline Digestion for Hexavalent Chromium.
	3.3 Methods for Determination of Inorganic Analytes.
6010B	Inductively Coupled Plasma—Atomic Emission Spectroscopy.
*	* * * * * *
7063	Arsenic in Aqueous Samples and Extracts by Anodic Stripping Voltammetry (ASV).
*	* * * * * *
7199	Determination of Hexavalent Chromium in Drinking Water, Groundwater and Industrial Wastewater Effluents by Ion Chromatography.
*	* * * * * *
7472	Mercury in Aqueous Samples and Extracts by Anodic Stripping Voltammetry (ASV).
*	* * * * * *
7521	Nickel (Atomic Absorption, Furnace Method).
*	* * * * * *
7580	White Phosphorus (P_4) by Solvent Extraction and Gas Chromatography.
	Chapter Four—Organic Analytes.
	4.1 Sampling Considerations.
	4.2 Sample Preparation Methods.
	4.2.1 Extractions and Preparations.
3500B	Organic Extraction and Sample Preparation.
3510C	Separatory Funnel Liquid-Liquid Extraction.
3520C	Continuous Liquid-Liquid Extraction.
3535	Solid-Phase Extraction (SPE).
3540C	Soxhlet Extraction.
*	* * * * * *
3542	Extraction of Semivolatile Analytes Collected Using Modified Method 5 (Method 0010) Sampling Train.
3545	Pressurized Fluid Extraction (PFE).
3550B	Ultrasonic Extraction.
3560	Supercritical Fluid Extraction of Total Recoverable Petroleum Hydrocarbons.
3561	Supercritical Fluid Extraction of Polynuclear Aromatic Hydrocarbons.
*	* * * * * *
3585	Waste Dilution for Volatile Organics.
5000	Sample Preparation for Volatile Organic Compounds.
5021	Volatile Organic Compounds in Soils and Other Solid Matrices Using Equilibrium Headspace Analysis.
5030B	Purge-and-Trap for Aqueous Samples.
5031	Volatile, Nonpurgeable, Water-Soluble Compounds by Azeotropic Distillation.
5032	Volatile Organic Compounds by Vacuum Distillation.
5035	Closed-System Purge-and-Trap and Extraction for Volatile Organics in Soil and Waste Samples.
5041A	Analysis for Desorption of Sorbent Cartridges from Volatile Organic Sampling Train (VOST).
	4.2.2 Cleanup.
3600C	Cleanup.
3610B	Alumina Cleanup.
3611B	Alumina Column Cleanup and Separation of Petroleum Wastes.
3620B	Florisil Cleanup.
3630C	Silica Gel Cleanup.
*	* * * * * *
3650B	Acid-Base Partition Cleanup.
3660B	Sulfur Cleanup.
3665A	Sulfuric Acid/Permanganate Cleanup.
	4.3 Determination of Organic Analytes.
	4.3.1 Gas Chromatographic Methods.
8000B	Determinative Chromatographic Separations.
*	* * * * * *
8015B	Nonhalogenated Organics Using GC/FID.
8021B	Aromatic and Halogenated Volatiles by Gas Chromatography Using Photoionization and Electrolytic Conductivity Detectors in Series.
*	* * * * * *
8032A	Acrylamide by Gas Chromatography.
8033	Acetonitrile by Gas Chromatography with Nitrogen-Phosphorus Detection.
8041	Phenols by Gas Chromatography.

TABLE 3.—FINAL UPDATE III OF SW–846, THIRD EDITION—Continued

Method No.	Title
8061A	Phthalate Esters by Gas Chromatography with Electron Capture Detection (GC/ECD).
8070A	Nitrosamines by Gas Chromatography.
8081A	Organochlorine Pesticides by Gas Chromatography.
8082	Polychlorinated Biphenyls (PCBs) by Gas Chromatography.
8091	Nitroaromatics and Cyclic Ketones by Gas Chromatography.
* * *	* * * *
8111	Haloethers by Gas Chromatography.
* * *	* * * *
8131	Aniline and Selected Derivatives by Gas Chromatography.
* * *	* * * *
8151A	Chlorinated Herbicides by GC Using Methylation or Pentafluorbenzylation Derivatization.
	4.3.2 Gas Chromatographic/Mass Spectroscopic Methods.
8260B	Volatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS).
8270C	Semivolatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS).
8275A	Semivolatile Organic Compounds (PAHs and PCBs) in Soils/Sludges and Solid Wastes Using Thermal Extraction/Gas Chromatography/Mass Spectrometry (TE/GC/MS).
8280A	The Analysis of Polychlorinated Dibenzo-p-Dioxins and Polychlorinated Dibenzofurans by High Resolution Gas Chromatography/Low Resolution Mass Spectrometry (HRGC/LRMS).
* * *	* * * *
	4.3.3 High Performance Liquid Chromatographic Methods.
* * *	* * * *
8315A	Determination of Carbonyl Compounds by High Performance Liquid Chromatography (HPLC).
* * *	* * * *
8321A	Solvent Extractable Nonvolatile Compounds by High Performance Liquid Chromatography/Thermospray/Mass Spectrometry (HPLC/TS/MS) or Ultraviolet (UV) Detection.
8325	Solvent Extractable Nonvolatile Compounds by High Performance Liquid Chromatography/Particle Beam/Mass Spectrometry (HPLC/PB/MS).
* * *	* * * *
8332	Nitroglycerine by High Performance Liquid Chromatography.
	4.3.4 Infrared Methods.
* * *	* * * *
8430	Analysis of Bis(2-chloroethyl) Ether Hydrolysis Products by Direct Aqueous Injection GC/FT-IR.
8440	Total Recoverable Petroleum Hydrocarbons by Infrared Spectrophotometry.
	4.3.5 Miscellaneous Spectrometric Methods.
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40000	Immunoassay.
4010A	Screening for Pentachlorophenol by Immunoassay.
4015	Screening for 2,4-Dichlorophenoxyacetic Acid by Immunoassay.
4020	Screening for Polychlorinated Biphenyls by Immunoassay.
4030	Soil Screening for Petroleum Hydrocarbons by Immunoassay.
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4050	TNT Explosives in Soils by Immunoassay.
4051	Hexahydro-1,3,5-trinitro-1,3,5-triazine (RDX) in Soil by Immunoassay.
	4.5 Miscellaneous Screening Methods.
* * *	* * * *
8515	Colorimetric Screening Method for Trinitrotoluene (TNT) in Soil.
9078	Screening Test Method for Polychlorinated Biphenyls in Soil.
9079	Screening Test Method for Polychlorinated Biphenyls in Transformer Oil.
	Chapter Five—Miscellaneous Test Methods.
* * *	* * * *
9010B	Total and Amenable Cyanide(Colorimetric, Manual).
9012A	Total and Amenable Cyanide (Colorimetric, Automated UV).
* * *	* * * *
9014	Titrimetric and Manual Spectrophotometric Determinative Methods for Cyanide.
* * *	* * * *
9023	Extractable Organic Halides (EOX) in Solids.

TABLE 3.—FINAL UPDATE III OF SW–846, THIRD EDITION—Continued

Method No.	Title
9030B	Acid-Soluble and Acid-Insoluble Sulfides.
* * *	* * * *
9034	Titrimetric Procedure for Acid-Soluble and Acid-Insoluble Sulfides.
* * *	* * * *
9057	Determination of Chloride from HCl/Cl_2 Emission Sampling Train (Methods 0050 and 0051) by Anion Chromatography.
* * *	* * * *
9210	Potentiometric Determination of Nitrate in Aqueous Samples with Ion-Selective Electrode.
9211	Potentiometric Determination of Bromide in Aqueous Samples with Ion-Selective Electrode.
9212	Potentiometric Determination of Chloride in Aqueous Samples with Ion-Selective Electrode.
9213	Potentiometric Determination of Cyanide in Aqueous Samples and Distillates with Ion-Selective Electrode.
9214	Potentiometric Determination of Fluoride in Aqueous Samples with Ion-Selective Electrode.
9215	Potentiometric Determination of Sulfide in Aqueous Samples and Distillates with Ion-Selective Electrode.
* * *	* * * *
	Chapter Six—Properties.
1030	Ignitability of Solids.
1120	Dermal Corrosion.
* * *	* * * *
9050A	Specific Conductance.
* * *	* *
9095A	Paint Filter Liquids Test.
* * *	* * * *
	Chapter Seven—Characteristics Introduction and Regulatory Definitions.
	Chapter Eight—Methods for Determining Characteristics.
* * *	* * * *
	Chapter Ten—Sampling Methods.
* * *	* * * *
0011	Sampling for Selected Adehyde and Ketone Emissions from Stationary Sources.
0023A	Sampling Method for Polychlorinated Dibenzo-p-Dioxins and Polychlorinated Dibenzofuran Emissions from Stationary Sources.
* * *	* * * *
0031	Sampling method for Volatile Organic Compounds (SMVOC).
0040	Sampling of Principal Organic Hazardous Constituents from Combustion Sources Using Tedlar® Bags.
0050	Isokinetic HCl/Cl_2 Emission Sampling Train.
0060	Determination of Metals in Stack Emissions.
0061	Determination of Hexavalent Chromium Emissions from Stationary Sources.
0051	Midget Impinger HCl/Cl_2 Emission Sampling Train.
0100	Sampling for Formaldehyde and Other Carbonyl Compounds in Indoor Air.
* * *	* * * *

Note: A suffix of ''A'' in the method number indicates revision one (the method has been revised once). A suffix of ''B'' in the method number indicates revision two (the method has been revised twice). A suffix of ''C'' in the method number indicates revision three (the method has been revised three times).

VI. State Authority

For these Regulatory cases where SW–846 is required, today's rule provides standards that are not immediately effective in authorized States since the requirements are being imposed pursuant to pre-HSWA authority. See RCRA section 3006. The requirements will be applicable only in those States that do not have final authorization. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements under State law. Procedures and deadlines for State program revisions are set forth in 40 CFR 271.21. 40 CFR 271.3 sets forth the requirements a State must meet when submitting its final authorization application.

VII. Effective Date

Section 3010 of RCRA provides that regulations promulgated pursuant to subtitle C of RCRA shall take effect six months after the date of promulgation. However, HSWA-amended section 3010 of RCRA allows rules to become effective in less than six months when, among other things, the Agency finds that the regulated community does not need six months to come into compliance. SW–846, as revised by Update III, inclusively provides greater flexibility to the regulated community in testing and monitoring solid waste by offering a greater selection of approved methods and by promoting more flexibility in method application. In addition, no method was deleted as part of Update III unless at least one other approved replacement method was also readily available in SW–846. Therefore, the Agency believes that the regulated community does not need six months to come into compliance. For the same reasons, the Agency believes that good cause exists under the Administrative Procedures Act, 5 U.S.C section 553(d), for not delaying the effective date of this rule. Therefore, this rule is effective June 13, 1997.

VIII. Regulatory Analyses

A. Executive Order 12866

The Agency has determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 because this rule does not create any new regulatory requirements and it does not require any new reports beyond those now required. Therefore, this rule is not subject to OMB review and the requirements of the Executive Order.

B. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA or the Act), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the Act, EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the Act a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

EPA has determined that this rule does not include a Federal mandate that may result in estimated costs of $100 million or more to State, local, and tribal governments in the aggregate, or to the private sector, in any one year. This is due to the fact that this rule simply revises available test methods for complying with existing regulatory requirements, and in most cases, the SW–846 test methods are provided as guidance, not requirements. Even where the use of a specific test method is required, the Agency does not believe that the revised methods will result in significant cost increases and indeed, most of the revised methods are expected to result in reduced costs. For example, new immunoassay methods can be run in the field, replacing expensive gas chromatographic laboratory work; this will allow for more and faster sampling, helping to reduce the cost of cleanups. Thus, today's notice is not subject to the written statement requirements in sections 202 and 205 of the Act.

As for section 203 of the Act, today's rule is not expected to have any ''unique'' effects on small governments; the only expected effects on a small government would be where that government is itself managing hazardous wastes, and is using one or more test methods for complying with RCRA regulations. Further, for the reasons set out in the prior paragraph, the revised test methods would not be expected to have a ''significant'' effect on small governments (or other users of test methods). Thus, today's notice is not subject to the requirements of section 203 of the Act.

C. Certification Under the Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–6012, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions).

The EPA has determined that this rule will not have a significant economic impact on a substantial number of small entities. This rule does not create any new regulatory requirements and it does not require any new reports beyond those now required. Some of the methods found in Update III to SW–846, Third Edition, are required by some of the regulations under subtitle C of RCRA. Based on an evaluation of each of those methods and the regulatory requirements, the Agency determined that this update will not impose significant additional costs on any member of the regulated community. In addition, SW–846 functions in other situations as a guidance document and the net effect of an update to the document is to provide greater flexibility and utility to all of the regulated community, including small entities, by providing an increased choice of appropriate analytical methods for RCRA applications. Therefore, the EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Flexibility Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. Thus the rule, does not require an RFA.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Paperwork Reduction Act

There are no additional reporting, notification, or recordkeeping provisions associated with today's rule. Such provisions, were they included, would be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects

40 CFR Part 260

Environmental protection, administrative practice and procedure, Confidential business information, Hazardous waste, Incorporation by reference, Reporting and recordkeeping requirements.

40 CFR Part 264

Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 265

Air pollution, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water Supply.

40 CFR Part 266

Energy, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: May 29, 1997.

Timothy Fields, Jr.,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set out in the preamble, title 40, ch. I, of the Code of Federal Regulations is amended as set forth below:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

Subpart B—Definitions

2. Section 260.11(a) is revised to read as follows:

§ 260.11 References.

(a) When used in parts 260 through 270 of this chapter, the following publications are incorporated by reference:

(1) ''ASTM Standard Test Methods for Flash Point of Liquids by Setaflash Closed Tester,'' ASTM Standard D–3278–78, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

(2) ''ASTM Standard Test Methods for Flash Point by Pensky-Martens Closed Tester,'' ASTM Standard D–93–79 or D–93–80. D–93–80 is available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

(3) ''ASTM Standard Method for Analysis of Reformed Gas by Gas Chromatography,'' ASTM Standard D–1946–82, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

(4) ''ASTM Standard Test Method for Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method),'' ASTM Standard D 2382–83, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

(5) ''ASTM Standard Practices for General Techniques of Ultraviolet-Visible Quantitative Analysis,'' ASTM Standard E 169–87 available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

(6) ''ASTM Standard Practices for General Techniques of Infrared Quantitative Analysis,'' ASTM Standard E 168–88, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

(7) ''ASTM Standard Practice for Packed Column Gas Chromatography,'' ASTM Standard E 260–85, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

(8) ''ASTM Standard Test Method for Aromatics in Light Naphthas and Aviation Gasolines by Gas Chromatography,'' ASTM Standard D 2267–88, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

(9) ''APTI Course 415: Control of Gaseous Emissions,'' EPA Publication EPA–450/2–81–005, December 1981, available from National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

(10) ''Flammable and Combustible Liquids Code'' (1977 or 1981), available from the National Fire Protection Association, 470 Atlantic Avenue, Boston, MA 02210.

(11) ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846 [Third Edition (November 1986), as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996)]. The Third Edition of SW–846 and Updates I, II, IIA, IIB, and III (document number 955–001–00000–1) are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800. Copies of the Third Edition and its updates are also available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 487–4650. Copies may be inspected at the Library, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

(12) ''Screening Procedures for Estimating the Air Quality Impact of Stationary Sources, Revised'', October 1992, EPA Publication No. EPA–450/R–92–019, Environmental Protection Agency, Research Triangle Park, NC.

(13) ''ASTM Standard Test Methods for Preparing Refuse-Derived Fuel (RDF) Samples for Analyses of Metals,'' ASTM Standard E926–88, Test Method C—Bomb, Acid Digestion Method, available from American Society for Testing Materials, 1916 Race Street, Philadelphia, PA 19103.

(14) ''API Publication 2517, Third Edition'', February 1989, ''Evaporative Loss from External Floating-Roof Tanks,'' available from the American Petroleum Institute, 1220 L Street, Northwest, Washington, DC 20005.

(15) ''ASTM Standard Test Method for Vapor Pressure—Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope,'' ASTM Standard D 2879–92, available from American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103.

* * * * *

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

3. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

Subpart AA—Air Emission Standards for Process Vents

4. Paragraphs (d)(1)(iii) and (f) of § 264.1034 are revised to read as follows:

§ 264.1034 Test methods and procedures.

* * * * *

(d) * * *

(1) * * *

(iii) Each sample shall be analyzed and the total organic concentration of the sample shall be computed using Method 9060 or 8260 of SW–846 (incorporated by reference under § 260.11).

* * * * *

(f) When an owner or operator and the Regional Administrator do not agree on whether a distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation manages a hazardous waste with organic concentrations of at least 10 ppmw based on knowledge of the waste, the procedures in Method 8260 of SW–846 (incorporated by reference under § 260.11) may be used to resolve the dispute.

* * * * *

Subpart BB—Air Emission Standards for Equipment Leaks

5. Paragraph (d)(2) of § 264.1063 is revised to read as follows:

§ 264.1063 Test methods and procedures.

* * * * *

(d) * * *

(2) Method 9060 or 8260 of SW–846 (incorporated by reference under § 260.11); or

* * * * *

6. Footnote no. 5 to appendix IX to part 264 is revised to read as follows:

Appendix IX to Part 264—Ground-Water Monitoring List

* * * * *

[5] Suggested methods refer to analytical procedure numbers used in the EPA publication, SW–846, ''Test Methods for Evaluating Solid Waste'', Third Edition. Analytical details can be found in SW–846 and in documentation on file at the Agency. The packed column gas chromatography methods 8010, 8020, 8030, 8040, 8060, 8080, 8090, 8110, 8120, 8140, 8150, 8240, and 8250 were promulgated methods through Update IIB of SW–846 and, as of Update III, the Agency has replaced these methods with ''capillary column GC methods'', as the suggested methods.

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

7. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, 6935, and 6936, unless otherwise noted.

Subpart AA—Air Emission Standards for Process Vents

8. Paragraphs (d)(1)(iii) and (f) of § 265.1034 are revised to read as follows:

§ 265.1034 Test methods and procedures

* * * * *

(d) * * *

(1) * * *

(iii) Each sample shall be analyzed and the total organic concentration of the sample shall be computed using Method 9060 or 8260 of SW–846 (incorporated by reference under § 260.11).

* * * * *

(f) When an owner or operator and the Regional Administrator do not agree on whether a distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation manages a hazardous waste with organic concentrations of at least 10 ppmw based on knowledge of the waste, the procedures in Method 8260 of SW–846 (incorporated by reference under § 260.11) may be used to resolve the dispute.

* * * * *

Subpart BB—Air Emission Standards for Equipment Leaks

9. Paragraph (d)(2) of § 265.1063 is revised to read as follows:

§ 265.1063 Test methods and procedures.

* * * * *

(d) * * *

(2) Method 9060 or 8260 of SW–846 (incorporated by reference under § 260.11); or

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

10. The authority citation for part 266 continues to read as follows:

Authority: 42 U.S.C 6905, 6912(a), 6924, and 6934.

Subpart H-—Hazardous Waste Burned in Boilers and Industrial Furnaces (effective August 21, 1991)

11. Section 266.104 is amended by revising paragraph (e)(1) to read as follows:

§ 266.104 Standards to control organic emissions.

* * * * *

(e) * * *

(1) During the trial burn (for new facilities or an interim status facility applying for a permit) or compliance test (for interim status facilities), determine emission rates of the tetra-octa congeners of chlorinated dibenzo-p-dioxins and dibenzofurans (CDDs/CDFs) using Method 0023A, Sampling Method for Polychlorinated Dibenzo-p-Dioxins and Polychlorinated Dibenzofurans Emissions from Stationary Sources, EPA Publication SW–846, as incorporated by reference in § 260.11 of this chapter.

* * * * *

12. Section 266.106 is amended by revising paragraph (g)(1) and (2) to read as follows:

§ 266.106 Standards to control metals emissions.

* * * * *

(g) * * *

(1) *General.* Emission testing for metals shall be conducted using Method 0060, Determinations of Metals in Stack Emissions, EPA Publication SW–846, as incorporated by reference in § 260.11 of this chapter.

(2) *Hexavalent chromium.* Emissions of chromium are assumed to be hexavalent chromium unless the owner or operator conducts emissions testing to determine hexavalent chromium emissions using procedures prescribed in Method 0061, Determination of Hexavalent Chromium Emissions from Stationary Sources, EPA Publication SW–846, as incorporated by reference in § 260.11 of this chapter.

* * * * *

13. Section 266.107 is amended by revising paragraph (f) to read as follows:

§ 266.107 Standards to control hydrogen chloride (HCl) and chlorine gas (Cl_2) emissions.

* * * * *

(f) Emissions testing. Emissions testing for HCl and Cl_2 shall be conducted using the procedures described in Methods 0050 or 0051, EPA Publication SW–846, as incorporated by reference in § 260.11 of this chapter.

* * * * *

14. In appendix IX to part 266, section 3.0 is revised to read as follows:

Appendix IX to Part 266—Methods Manual for Compliance with the BIF Regulations

* * * * *

3.0 Sampling and Analytical Methods

Note: The sampling and analytical methods to the BIF manual are published in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, as incorporated by reference in § 260.11 of this chapter.

* * * * *

[FR Doc. 97–15410 Filed 6–12–97; 8:45 am]

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federal register

Friday
June 13, 1997

Part VII

The President

Executive Order 13048—Improving Administrative Management in the Executive Branch

Federal Register
Vol. 62, No. 114
Friday, June 13, 1997

Presidential Documents

Title 3—

The President

Executive Order 13048 of June 10, 1997

Improving Administrative Management in the Executive Branch

Improvement of Government operations is a continuing process that benefits from interagency activities. One group dedicated to such activities is the President's Council on Management Improvement (PCMI), established by Executive Order 12479 in 1984, reestablished by Executive Order 12816 in 1992. In the intervening years, some activities of the PCMI have been assumed by the President's Management Council, the Chief Financial Officers Council, and the Chief Information Officers Council. These organizations are also focussed on improving agencies' use of quality management principles. Other functions have been assigned to individual agencies. Nonetheless, remaining administrative management matters deserve attention across agency lines.

By the authority vested in me as President by the Constitution and the laws of the United States of America and in order to improve agency administrative and management practices throughout the executive branch, I hereby direct the following:

Section 1. *Interagency Council on Administrative Management.*

(a) *Purpose and Membership.* An Interagency Council on Administrative Management (''Council'') is established as an interagency coordination mechanism. The Council shall be composed of the Deputy Director for Management of the Office of Management and Budget, who shall serve as Chair, and one senior administrative management official from each of the following agencies:

1. Department of State;
2. Department of the Treasury;
3. Department of Defense;
4. Department of Justice;
5. Department of the Interior;
6. Department of Agriculture;
7. Department of Commerce;
8. Department of Labor;
9. Department of Health and Human Services;
10. Department of Housing and Urban Development;
11. Department of Transportation;
12. Department of Energy;
13. Department of Education;
14. Department of Veterans Affairs;
15. Environmental Protection Agency;

16. Federal Emergency Management Agency;

17. Central Intelligence Agency;

18. Small Business Administration;

19. Department of the Army;

20. Department of the Navy;

21. Department of the Air Force;

22. National Aeronautics and Space Administration;

23. Agency for International Development;

24. General Services Administration;

25. National Science Foundation; and

26. Office of Personnel Management.

Department and agency heads shall advise the Chair of their selections for membership on the Council. Council membership shall also include representatives of the Chief Financial Officers Council, the Chief Information Officers Council, the Federal Procurement Council, the Interagency Advisory Group of Federal Personnel Directors, and the Small Agency Council, as well as at-large members appointed by the Chair, as he deems appropriate. The Chair shall invite representatives of the Social Security Administration to participate in the Council's work, as appropriate. The Council shall select a Vice Chair from among the Council's membership.

(b) The Council shall plan, promote, and recommend improvements in Government administration and operations and provide advice to the Chair on matters pertaining to the administrative management of the Federal Government. The Council shall:

(1) explore opportunities for more effective use of Government resources;

(2) support activities and initiatives of the President's Management Council, the Chief Financial Officers Council, the Chief Information Officers Council, the Federal Procurement Council, and the Interagency Advisory Group of Federal Personnel Directors designed to develop, review, revise, and implement Governmentwide administrative management policies; and

(3) identify successful administrative management practices, including quality management practices, and assist in their Governmentwide dissemination and implementation.

Sec. 2. *Responsibilities of the Chair.* The Chair or, if the Chair chooses, the Vice Chair shall:

(1) convene meetings of the Council;

(2) preside at formal council meetings;

(3) establish committees or working groups of the Council, as necessary for efficient conduct of Council functions; and

(4) appoint, to the extent permitted by law and consistent with personnel practices, other full-time officers or employees of the Federal Government to the Council as at-large members for specific terms, not exceeding 2 years, to provide expertise to the Council.

Sec. 3. *Responsibilities of Agency Heads.* To the extent permitted by law, heads of departments or agencies represented on the Council shall provide their representatives with administrative support needed to support Council activities.

Sec. 4. *Judicial Review.* This order is for the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 5. *Revocation.* Executive Order 12816 (creating the President's Council on Management Improvement), Executive Order 12552 (establishing the executive branch productivity improvement program) and Executive Order 12637 (revising the executive branch productivity improvement program) are revoked.

William J. Clinton

THE WHITE HOUSE,
June 10, 1997.

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FEDERAL REGISTER PAGES AND DATES, JUNE

CFR PARTS AFFECTED DURING JUNE

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